

**BEFORE THE TELANGANA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION:HYDERABAD**

(ADDITIONAL BENCH)

C.C.249/2017

Between :

Master Sai Nath, S/o. M. Chandrakanth,
Aged about: 15 years, Occ: Student of IVth Standard,
Being Minor, Rep. by his father and natural guardian,
Sri M. Chandrakanth, R/o. H.NO. 32-77/14, Plot NO. 11,
Sri Krishna Apartments, Seetham Ram Nagar, Safilguda,
Hyderabad – 500056.

... Complainant

And

1. M/s. Kamineni Hospitals Ltd.,
Rep.by its MD. Dr. Kamineni Shashidar,
Aged about: 51 years, Occ: Business,
Sy. NO. 68, L.B. Nagar, Hyderabad – 500068.

2. Dr. Roshan Jaiswal,
Aged about: 45 years, Occ: Doctor Orthopedic Paediatrician
At M/s. Kamineni Hospitals Ltd., Sy. NO. 68, L.B. Nagar,
Hyderabad – 500068.

3. The Oriental Insurance Co. (CBO2),
Rep. by its Branch Manager, Flat No. 403,
04th Floor, Babu Khan Estate, Hyderabad – 500001.
(impleaded as per orders in IA. No.620/2019, dated 19.08.2019).

.... Opposite parties

Counsel for the Complainant : M/s. K. Naganadha Prasad
Counsel for the Opposite Parties No. 1 & 2: Sri Srinivasa Rao
Pachwa

Counsel for the Opposite Parties No.3 : M/s. S. Agasthya Sharma

**QUORUM: HON'BLE SRI V.V.SESHUBABU, MEMBER-J
&**

HON'BLE SMT R.S. RAJESHREE, MEMBER-MJ

**MONDAY, THE NINETEENTH DAY OF JUNE
TWO THOUSAND TWENTY THREE**

Order : (Hon'ble V.V. SESHU BABU MEMBER-J)

1. The original complainant is filed on 07.12.2017 U/s. 17 (1) (a) of Consumer Protection Act, 1986, and also the amended complaint directing the opposite parties NO. 1 to 3 to pay compensation of Rs.30,00,000/- with future interest @18% per annum till the payment.

2. The brief averments of the original and amended complaints are that opposite party No.2 is working in the opposite party hospital as an Orthopedic paediatrician and opposite party No. 3 is the insurance company with whom the opposite party No. 2 taken professional indemnity policy bearing No. 431602/48/2017/1839 at the relevant period: that the complainant being a minor represented by his father and natural guardian: that the complainant is born with cerebral palsy with hemiplegia: that as the father is working as Head Constable in the Police Department of Telangana State covered under Arogya Bhadratha Scheme: that the complainant as undergone surgery to his both legs at Sunshine Hospital, Secunderabad about two years back to improve leg movement and he was fixed with implant LCP in the right leg: that the Doctors advised to remove the implant after two years: that in the complainant approached them for the removal of implant LPC and he came to know at Arogya Bhadratha Scheme was discontinued in the Sunshine Hospital and he was advised to approach opposite party No.1 hospital.

3. (a) On 22.07.2017 the complainant along with his father approached the opposite party No.2 with the medical reports and having gone through the same, instructed to handover CD of gait analysis that accordingly they furnished the same and thereafter opposite party No.2 advised them to undergo an operation for the removal of implant in the right leg and surgery to both the legs: that the complainant was admitted in the opposite party hospital on 29.08.2017 and operation was performed on 30.08.2017 from morning to afternoon and was shifted to general ward: that informed to all the family members that implant was successfully removed: that on the midnight of 30.08.2017 the complainant felt lot of pain and crying: that the opposite party No.2 saw the complainant only on the evening of 31.08.2017 and stated that the bone was weak and advised x-ray of right leg and it was taken on 01.09.2017: that complainant was continuously crying and yelling with pain but was given only some pain killers: that the x-ray revealed bone in the leg was fractured: that opposite party No.2 to cover up his mistake stated that either to leave the things as it was or to get the fracture bone re-fixed with the similar plate and also

stated that the plate that will be fixed is of a permanent one: that opposite party No.2 knows that the complainant was born with cerebral palsy and he is very weak and tender from the childhood that inspite of the same without taking due caution removed the plate on 30.08.2017 in a negligent manner: that the bone was broken due to the careless operation while trying to remove proximal screw in the LCP: that on 02.09.2017 complainant was subjected to operation for placing 4.5 M SNE 9 holed DCP implant and x-ray was taken and discharged on 04.09.2017: that on 16.09.2017 opposite party No.2 has removed sutures but stated that the new implant has to be removed after one year, this statement is against to his statement made earlier: that the x-ray report dated 22.07.2017, 31.08.2017 & 02.09.2017 clearly indicate the deficiency in service on the part of opposite party NO.2: the complainant continues to incur Rs.10,000/- per month on the medication and Physio Therapy and also the education suffered besides physical and mental suffering; hence, the complaint.

4. The brief averments of the written version of opposite parties No. 1 & 2 are that the complaint is not maintainable either on facts or under law: that the complainant is put to strict proof of all the averments made in the complaint, except those that are admitted; that the allegation of Sunshine Hospital not covered under Arogya Bhadratha Scheme by the time of removal of implant is false: that complainant had Hydrocephalus in the early of the childhood and undergone multiple surgeries elsewhere: that the Hydrocephalus leads to damage to the brain and it is a Neuromuscular disorder and patients will have cognitive issues like mental retardation, gait abnormalities, developmental milestones also will be effected: that he undergone right hip, right thigh, right foot and left foot surgery at Sunshine Hospital in May 2014: that approached the opposite party No. 1 & 2 for correction of walking difficulties for which he requires multiple surgeries and also to remove the plate at right femur: that everything was explained to the parents of the complainant and also about the risk and complications involved in the surgery to the mother, the complainant and his brother also: that on 30.08.2017 surgery was performed for "patellar tendon reefing both sides and plate removal

from femur hamstring transfer on both sides”: that intra operatively while retrieving the implant, found that one of the screws was jammed in the plate and an undisplaced fracture through the screw hole was observed after removal of plate and screws: that opposite party No.2 decided to manage conservatively by applying Plaster of Paris: that in view of the undisplaced fracture, surgery to be done on the back of the knee which was differed: that everything was explained to the mother of the complainant: that the children with Neuromuscular disorders have weaker bone and thus more prone for such complications: that the complainant came three years after the first surgery, so, the chances of fracture were higher while removing the plate: that on 31.08.2017 lot of counselling was done on the complainant in view of behavioural issues: that post operatively complainant recovered well and was discharged on 04.09.2017 and was asked to come for review for removal of sutures but never turned up: that complainant was treated by medically established standard methods and protocols: that there was no negligence whatsoever on the part of opposite parties: that complainant is not entitled for any compensation: that there is no cause of action in filing the complaint due to absence of deficiency in service: that the complaint is barred by time: that the claim amount is excessive: that opposite party No.2 was covered by professional indemnity insurance under policy issued by opposite party No.3: that the opposite party No.2, Post Graduated (DME) from opposite party No.1 hospitals and had keen interest in Paediatric Orthopaedic and worked as Research Associate Fellow in the department of Paediatrics Orthopaedic CMC Vellore and went to Kinderklinik Hospital at Ashau, Germany. With this requested to dismiss the complaint with costs.

5. The brief averments of the written version of opposite party No.3 is almost similar with that of the written version of opposite party No.1 & 2 that there is no medical/professional negligence on the part of opposite party No.1 & 2. With this, requested to dismiss the complaint with costs.

6. To prove the case Mr. Chandrakanth father of complainant filed evidenced affidavit as PW1 and got marked Ex.A1

to A13. Opposite party No.2/Dr. Roshan Kumar Jaiswal filed evidence affidavit on behalf of opposite parties NO.1 & 2 as RW1 and got marked Ex.B1 & B2. Sri T. Bala Gopal, Regional Manager of opposite party No.3 filed evidenced affidavit as RW2. PW1 & RW1 are subjected to cross examination. Heard the arguments on both sides.

7. For the points for determination are:-

(i) Whether there is negligence/deficiency of service on the part of opposite party No.2 while treating complainant?

(ii) Whether complainant is entitled for compensation? If so, to what amount?

(iii) Relief?

8. **Point No. 1 to 3:-**

In the case on hand it is an admitted fact that the minor complainant is born with cerebral palsy with hemiplegia; that likewise bones of such children will be brittle. This fact is known to RW1/Opposite party No.2. It is also an admitted fact that the complainant undergone several operations to his legs prior to joining in the opposite party No.1 hospital. For removal of implants made in Sunshine Hospital fixed in the year 2014 (as per admission of PW1) admitted on 29.08.2017. PW1 also stated that the Doctors at Sunshine Hospital advised him to get the implants removed within one and half years. For the reasons better known to PW1, the implants were not removed as suggested by the Doctors at Sunshine Hospital.

9. As per Ex.B1/Discharge summary the complainant after subjected to investigations and clearance from anaesthesiology undergone the surgery on 30.08.2017 for implant removal (LCP) from distal femur + bilateral patellar tendon reefing +bilateral above knee cylindrical casting for both lower limbs done under general anesthesia and surgery ORIF with plating of right femur and bilateral semitendinosus tendon transfer under general anesthesia was done on 02.09.2017. In the cross examination RW1

stated that the surgery on 30.08.2017 was commenced at 8:00 AM and completed by 10:30 AM and complainant came out of anesthesia at 10:45 Am and shifted toward around 11:00 AM; that it is true that on the date of operation, I have physically seen the bone of right thigh. Witness adds that we could see undisplaced fracture right femur; I did not see this fracture with my naked eyes during surgery; that witness adds that during the surgery the fracture is undisplaced. It means one can safely conclude as per the evidence of RW1 that, as fracture was undisplaced not seen the fracture of right femur with the naked eyes.

10. Admittedly, no x-ray was taken on 30.08.2017. RW1 stated that as complainant was not co-operating no x-ray was taken on 30.08.2017; that though bed side x-ray was available but clarity of the images are not clear. Ex.A12 was the x-ray which was taken on 31.08.2017. The perusal of Ex.A12 x-ray film goes to show that, the bone was complete took a different angle and leaned to the right side at the mid region. When the Ex.A12 shows such badly displaced bone, the surgery was performed on 02.09.2017. No acceptable reasons are given for such delay inspite of statement of RW1. The patient continuously crying after operation dated 30.08.2017. Taking into consideration the physical and mental status of the complainant the delay in performing the operation amounts to not only negligence but also the deficiency of service.

11. When RW1 failed to observe the undisplaced fracture at time of operation dated 30.08.2017 (by his own admission), ventured to make a note in the case sheet on 30.08.2017, that the; attendants have been informed the peri-operative event of fracture thigh L screw site. The x-ray on 31.08.2017 (Ex.A12) was advised at 8:30 AM. So, there is no chance for RW1 even remotely to say that, there was undisplaced fracture while he was trying to remove the screw affixed to the plate. Making an entry regarding such fact on 30.08.2017 at 6:00 PM, is nothing but tampering the record to absolve himself from negligence and deficiency of service. The brittleness bones is not the point for consideration to assess the negligence of RW1, but the tampering of record and setting forth of version in the written statement that he observed the undisplaced

fracture at the time of operations and thought of treating conservatively and for that reason applied POP etc., is nothing but tissues of false statement. So, all the points are answered against the opposite parties.

12. When PW1 failed to place any documentary evidence to show that the complainant is taking physio therapy and when the treatment was given to the complainant under Arogyha Bhadratha Scheme, not incurred any expenses for the treatment. Taking into consideration physical and mental status of the minor complainant we are of the view that compensation of Rs.6,00,000/- with interest @9% from the date of complaint till the date of payment, will meet the ends of justice. The liability of opposite party No.3 arises only after payment of amount by opposite party No.1 & 2 and thereafter opposite party No.3 shall reimburse them as per terms and conditions of the policy.

13. In the result, the complaint is partly allowed with a direction to the opposite parties No.1 & 2 with joint and several liability to pay Rs.6,00,000/- as compensation to the complainant with interest @9% p.a., from the date of complaint i.e., 07.12.2017 till the date of payment, besides costs of Rs.20,000/- that on making such payment by the opposite party No.1&2, the insurer/opposite party No.3 is directed to reimburse them.

Time for compliance is 30 days from the date of receipt of the order failing which the interest will be enhanced from @9% to 12% p.a.,

SD/-

SD/-

MEMBER(M-J)

MEMBER (M-NJ)

Dt:19.06.2023.

BSR

APPENDIX OF EVIDENCE
WITNESS EXAMINED

Evidence affidavit of
The complainant
PW1: Mr. M. Chandrakanth

Evidence affidavit of
Opposite parties
RW1: Dr. Roshan Kumar
Jaiswal

RW2: Sri T. Balagopal

EXHIBITS MARKED**For Complainant:**

- Ex.A1: is the Photostat copy of Sunshine Hospitals OP Card Receipt, dated: 29.01.2014
- Ex.A2: is the Photostat copy of Kamineni Hospitals OP Card Receipt, dated:22.07.2017.
- Ex.A3: is the Photostat copy of Kamineni Hospitals OP Card Receipt, dated: 25.07.2017.
- Ex.A4: is the Photostat copy of Kamineni Hospitals OP Card Receipt, dated: 22.08.2017.
- Ex.A5: is the Photostat copy of Kamineni Hospitals OP Card Receipt, dated: 22.08.2017.
- Ex.A6: is the Photostat copy of Kamineni Hospitals OP Card Receipt, dated: 29.08.2017.
- Ex.A7: is the Photostat copy of Kamineni Hospitals OP Discharge summary, dated: 04.09.2017.
- Ex.A8: is the Photostat copy of Kamaineni Hospitals X-Ray, dated: 22.07.2017.
- Ex.A9: is the Photostat copy of Kamaineni Hospitals X-Ray.
- Ex.A10: is the Photostat copy of X-Ray, dated: 02.09.2017.
- Ex.A11: is the Original copy of X-Ray report.
- Ex.A12: is the Original copy of X-Ray report.
- Ex.A13: is the Original copy of X-Ray report.

For Opposite Parties:

- Ex.B1: is the Original copy of Discharge Summary, dated: 04.09.2017.
- Ex.B2: is the Photostat copy of Professional Indemnity Doctors Policy Schedule.

SD/-

SD/-

MEMBER(M-J)-----
MEMBER (M-NJ)**Dt: 19.06.2023.***BSR*