

**IN THE STATE COMMISSION : DELHI**

(Constituted under Section 9 of the Consumer Protection Act, 1986)

Date of Arguments : 25.04.2019

Date of Decision : 27.05.2019

**COMPLAINT NO.474/2015**

**In the matter of:**

Mrs. Swapnil Mishra,  
W/o. Shri Manas Ranjana Gautam,  
R/o. G-35, Sector-39,  
Noida-201301.

.....Complainant

**Versus**

1. M/s. Pushpanjali Healthcare,  
At-A/14, Pushpanjali,  
Vikas Marg Extn.,  
Delhi-110092.

.....Opposite Party No.1

Also at :

W-3 Sector-1,Vaishali,  
Ghaziabad, UP-201012.

.....Opposite Party No.2

2. Dr. Sharda Jain,  
W-3 Sector-1,Vaishali,  
Ghaziabad, UP-201012.

.....Opposite Party No.3

3. Fortis Memorial Research Institute,  
Escorts Heart Institute and Research Centre,  
Okhla Road, New Delhi-110025.

.....Opposite Party No.4

4. Dr. Neena Singh,  
Escorts Heart Institute and Research Centre,  
Okhla Road, New Delhi-110025.

.....Opposite Party No.5

5. Fortis La Femme Centre for Women,  
S-549, Greater kailash-II,  
New Delhi-110048.

**CORAM**

Hon'ble Sh. O. P. Gupta, Member (Judicial)

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|---|--------|
| 1. Whether reporters of local newspaper be allowed to see the judgment? | Yes/No |
| 2. To be referred to the reporter or not?                               | Yes/No |

**Shri O.P. Gupta, Member (Judicial)**

**JUDGEMENT**

1. The case of the complainant is that in November, 2011 she suffered heavy pain during her period (MC). She immediately decided to visit some good hospital. On 02.11.15 (sic it should have been 02.11.11) The complainant visited the OP-1 hospital. She was referred to OP-2/ HOD of Gynaecology Department. OP-2 scared complainant and advised without check up that she might have very serious disease. She was asked to go for various tests. From very first visit, OP-2 started saying various things about OP-1 hospital. OP-2 said that hospital was running a practice of misguiding people with test and by declaring wrong diseases and once the patient was scared, the hospital extracts huge money from the patient in the name of medical treatment. OP-2 further advised complainant that she was having her own private clinic and private laboratory at W-3, Sector-1, Vaishali Ghaziabad, UP and it would be better for her if she visits private clinic of OP-2. Despite said advice complainant again went to the OP-1 hospital because clinic of OP-2 was far away.

2. Complainant went for various tests including ultra sound tests. After ultra sound OP-1 and 2 declared that complainant was having a serious disease which needed a proper treatment. OP-2 again warned complainant against the unethical practice of OP-1 hospital and instructed complainant to come to her private clinic and lab. On next visit complainant went to visit private clinic. There OP-2 scared complainant with

the chances of some severe disease and wrote another series of tests (all highly expensive). Complainant went for entire tests in laboratory of OP-2. When results of test of Pathogen Assisted Molecular Pattern (PAMP) was received, OP-2 declared that complainant was suffering from edometrium TB. This was a big shock for complainant and her family. Complainant was in a very good health and there was no physical symptoms of any disease. Thus complainant and her family members tried to convince OP-2 to recheck their opinion but OP-1 and 2 declared that complainant was suffering from edometrium TB. OP-2 further advised complainant that she and her husband should immediately plan their first baby simultaneously with TB medicine, otherwise it would be too late for them.

3. Complainant and her husband went under huge stress and asked OP-2 whether it would be correct to plan a baby while mother is on heavy TB medicines as it is commonly heard that during pregnancy mother should not take any medicine. The complainant informed that she was only 28 years of age and ready to wait for another one year for baby but OP-1 and 2 strictly advised complainant to immediately plan their first baby simultaneously with TB medicines. On this advice complainant and her husband decided to plan for their first baby alongside continuing complainant's heavy TB medicines. On 30.03.11 after passing of two months complainant missed her period and contacted the OP-1 and

2. OP-1 and 2 declared complainant is pregnant and prescribed a number of medicines, hormones and tests. They further strongly instructed complainant that it was a precious pregnancy and complainant needed to save it under her personal guidance at her private clinic.

4. The complainant insisted to come in hospital as there were stairs in private clinic of OP-2 and complainant being a patient of slip disc, more importantly being a pregnant woman should avoid climbing stairs. OP-2 lost their temper and started shouting and misbehaved with complainant. Complainant contacted OP-1 hospital which said that OP-2 was its main doctor i.e HOD of Gynaecology and only OP-2 has right to decide about the complainant's treatment. The rude and greedy behaviour of the OPs was very humiliating for any human being more so a pregnant woman. It was a reason of huge mental stress and agony. The complainant decided to see another doctor and do some research work on the internet. She did some research work on the internet and unofficially met doctors and showed them all the reports/document of treatment with the OP-1 and 2. She got a major shock when it was confirmed that growth of the baby was not proper and the test of Pathogen Assisted Molecular Pattern (PAMP) on the basis of which OP-1 and 2 declared that complainant was suffering from edometrium TB was not the right test for declaring TB in any patient. Moreover the advice of planning baby simultaneously with TB medicines

was also a wrong medical advice and could kill the baby in mother's womb.

5. On 19.11.12 complainant approached OP-3 which is considered to be one of the best hospital for gynaecology. She was referred to OP-4. It was again confirmed that growth of the baby was not proper and test of Pathogen Assisted Molecular Pattern on the basis of OP-1 and 2 declared edometrium TB. They also confirmed that the advice of OP-1 and 2 for planning baby simultaneously with TB medicines was also a wrong medical advice and could kill the baby. OP-4 asked complainant to wait for another 15 days to watch the progress of the baby and advised ultrasound test. After 15 days OP-4 saw the ultrasound report and declared the baby was lost. OP-4 advised complainant to go for procedure of D&C. The complainant and her husband asked whether it would be correct to go for D&C as it was the first pregnancy of complainant or she should wait for automatic cleaning of cleaning through some medicines. OP-4 discouraged complainant and strongly advised to go for operation immediately. OP-4 was adamant to operate complainant the very same day but after repeated requests by complainant and her husband, OP-4 finally agreed to give 3 to 4 day time to the complainant.

6. Within 3-4 days automatic bleeding started. Complainant approached who OP-4 stated that if complainant did not go for cleaning through D&C there were 100% chances that

some particle will be left inside the body, there were chances of major infection. Complainant asked OP-4 if she could prescribe some medicine for cleaning. OP-4 again replied that chances of infection were high. Complainant agreed for D&C. On 10.04.12 OP-4 did D&C. Complainant was discharged the very same day.

7. After some days in the late night complainant experienced very severe pain in her lower abdomen. She had to immediately visit her family physician who advised for ultrasound test. The ultrasound report was a great shock to the life of the complainant and her family when it was revealed that operation of D&C was not done properly. Part of pregnancy admeasuring approximately 6"18 mm is still left inside the body of the complainant. Complainant immediately approached OP-3 hospital. OP-4 after taking the said ultrasound report confirmed that part of the pregnancy admeasuring approximately 6"18 mm was still inside the body of the complainant. The OP tried to justify her big mistake by stating that it was the first time in her life that such a blunder had happened. OP-4 started apologising for their blunder and convinced complainant to go for another D&C. Normally for a leftover of the size of 6"18 mm nobody operates but OP-4 advised wrongly for operation. OP-3 agreed to reoperate complainant without any charges for second surgery. However OP-4 remained unapologetic and adamant that she was not responsible for any act of negligence committed by her.

the complainant for second surgery. Waiver of charges by OP-3 by default committed by OP-4 in conducting the surgery is conclusive proof that doctor who was on the role of the hospital had negligently acted in doing the duty.

8. Real trauma of careless conduct of OP-4 started when Dr. Neeru Singh/ OP-4 committed the other negligent act by scratching the uterus so extensively that it damaged the wall of endometrium causing the very rare disease known as Asherman Syndrome. After conducting surgery OP-4 put copper-tee unnecessarily which caused a severe infection to complainant. This fact was disclosed by another doctor, Dr. Sheela Mehra, working at Moolchand Hospital, New Delhi and having an experience of more than 40 years in the field of Gynaecology that putting copper-tee was a medically wrong decision in the circumstances.

9. The disease Asherman Syndrome is capable of terminating the chances of fertility and may shatter the dream of a lady to become mother. When complainant and her family tried to contact the OPs-3 and 4 for above mentioned highly negligent blunders, OP-4 ran out of India. She stopped taking complainant's call.

10. After surgery complainant started feeling shortage of flow during the menstrual periods for which she consulted several doctors who could diagnose the actual disease and thought to be a hormonal problem. But after 2-3 months the period stopped and then she consulted various doctors, one of

whom pointed out these symptoms were indicating towards Asherman Syndrome.

11. The complainant went from pillar to post to search for an efficient and competent surgeon who could operate to cure this disease because this surgery was very complicated, required lot of precision, care and experience, apart from being very expensive and rare. After almost two years, complainant could get a competent doctor, Dr. Vivek Marwah, at Max Hospital, Saket who performed the surgery successfully. Post operation complainant was able to conceive but the pregnancy became highly risky. She was kept in bed for months, normal delivery was not opted by the OPs-1 to 4 who handled in past. Today also getting second baby is challenge for complainant. Few physical harms for complainant have become unavoidable by any action.

12. After negligent, careless, harassing and illegal acts committed by OPs-1 to 4, complainant went under severe medical complications. The heavy medicines resulted in causing depression. She was treated for disease like TT which she never had. She conceived during treatment of TT and medicated unnecessarily with severe hormonal medicines causing her physical and mental anxieties giving rise to restrict her physical and mental capabilities. She had to face the agony of loss of pregnancy because of wrong advice given by OP-2. She was put under knife unnecessarily despite having the natural ways of termination of pregnancy.



She was operated upon carelessly and negligently causing her one of the rarest diseases of female. Since November, 2011 to March 2013 she had to dedicate her whole physical, mental and financial assets just for getting herself into her original shape of body and mind. She has suffered major monetary losses and physical and mental harassment. She suffered losses in her personal as well as professional life.

13. She has claimed Rs.5 lakhs towards cost of hospital expenses, diagnostic test, medicines and conveyance. She has claimed Rs.18 lakhs as compensation for professional earnings which complainant could have made otherwise. She has claimed Rs.50 lakhs as compensation for physical and mental trauma and side effects of medication given unnecessarily or due to effect of negligent surgery and wrong advice. She has also sought interest @24% per annum from the date of liability till the date of actual payment. She has prayed for directions to Medical Association or any other concerned authority to debar all the OPs-1 to 4 from medical practice, directions to Police to investigate and take action against OPs-1 to 4. Litigation charges of Rs.1 lakh has also been sought.

14. During the pendency of the case the complainant moved an application for impleading Fortis La Femme as OP-5. Since impleadment of said hospital became necessary due to WS of OP-3 and 4, the application was allowed.

15. OP-1 was served on 19.10.16 and put in appearance through its counsel Ms. Megha Soni, who filed Vakalatnama. She stated that Pushpanjali Medical centre for whom she was appearing came into an existence on 03.09.15 after separation from Pushpanjali Health Care. Pushpanjali Health Care was now known as Max Hospital. So notice was issued to Max Hospital. On 04.09.17 Ms. Surbhi appeared for OP-1 and filed Memo of appearance. OP-1 was served for 30.03.17 but did not appear and not file WS. Its plea was that Ms. Surbhi, counsel for OP had been engaged on 04.09.17 only. That was no excuse and so right of OP-1 to file was closed.

16. OP-2 filed WS raising preliminary objections that complainant has got the notice issued without following mandatory order of Hon'ble Suporme Court in Martin F.D. Souza vs. Mohd. Isfaq were the Hon'ble Supreme Court directed that whenever a complaint is received against the doctor or a hospital by Consumer Fora or by Criminal Court, then before issuing notice to the doctor or the hospital, the Consumer Fora should refer the matter to competent doctor or committee of doctors specialised in the field and only after the committee report that there is primafacie medical negligence that notice should be issued. The complainant visited OP-2 till March, 2012 and the complaint is barred by limitation. On merits she denied each and every allegation According to her after the complainant was diagnosed with edometrium TB she took medicines from Dr. Monik

Aggarwal. The complaint has been filed in order to extort money for her although it was because of diagnosis done by her that complainant got treatment from edometrium TB and thereafter have been able to conceive.

17. OP-3 filed a WS raising preliminary objection that Fortis Memorial Research Institute was situated at Sector-44, Gurgaon which was not arrayed in the complaint. The complaint was barred by limitation. The complainant did not visit the hospital after 12.04.13, she was never admitted in OP-3 hospital and no procedure/surgery was conducted upon her in OP-3. It stated that OP-4 was not working with OP-3, they have never conjointly treated or given consultation to the complainant. On merits it admitted that complainant first attended OPD at FMRI on 19.11.12. At that time a probable diagnosis of Asherman's syndrome (Intrauterine Adhesions) was made and she was advised to undergo Hysteroscopic Adhesiolysis. She didn't report for the procedure. Complainant again attended FMRI OPD after 4-5 months or 12.04.13. She had not undergone report for the procedure or surgery at FMRI. It denied allegations of waiver of fees.

18. OP-4 filed a WS raising preliminary objection of limitation. She also stated that she didn't work with OP-3. She pleaded that complainant was suggested both medical and surgical methods for undergoing abortion. The complainant and her husband took 3-days to decide and finally got admitted to undergo D&C. The patient

came on 10.04.12 to show USG which revealed echogenic focus within the lumen measuring 18.3X6.6 mm in size. So the complainant was offered to surgically clean this focus and not resorting to medicine. On the next day complainant have voluntarily got carried out the surgery and signed the consent form. Copper-tee was inserted on the request of the complainant as complainant did not want to conceive till the time she was detected Asherman Syndrome. She suffered Asherman Syndrome because of edometrium TB and delayed treatment. Complainant first attended OPD at FMRI on 19.12.11. If simply a medicine would have given for cleaning the natural terminated pregnancy, it would not have been possible to retrieve products of conception to be sent for test as they would have gotten expelled.

19. OP-5 filed WS which is on the same line as that of OP-4.

20. The complainant filed separate rejoinders to WS of OP-2 and OP-4. In rejoinder to WS of OP-2 the complainant stated that objection regarding obtaining an expert opinion before summoning the hospital/ doctor has been over ruled in a subsequent decision titled as V. Krishan Rao vs. Nikhil Super Speciality Hospital (2010) SCC 513. OP-2 diagnosed complainant with edometrium TB on the test which had been banned by WHO and by Government of India. The same clearly establish prima facie medical negligence on the part of OP-2. Regarding limitation she stated that the cause of action can be said to have begun only when the misdiagnosis has come to the knowledge of the complainant. She could recover from

the misdiagnosis and mistreatment by OP-2 in February, 2014 till 2014 she was suffering from depression and Asherman Syndrome due to mistreatment by the OPs. The complaint is within limitation.

21. In rejoinder to the WS of OP-4 the complainant answered preliminary submission no.2 that cause of action had first arisen after the month of July, 2013 when Dr. Vivek Marwah finally diagnosed the complainant with Asherman's Syndrome after conducted the procedure of hysteroscopy. In N.N. Shrikhandey (Dr.) vs. Anita Sena Fernandes (2011) 1 SCC 53 the Hon'ble Supreme Court held that cause of action would be deemed to have arisen on the date the complainant discovers, harm, injury caused due to such act of the OP.
22. The complainant filed her own affidavit in evidence. She exhibited the various documents as exhibited A to J collectively.
23. OP-2 filed her own affidavit in evidence.
24. OP-3 filed affidavit of Dr. Ritu Garg, Zonal Director,
25. OP-4 filed her own affidavit in evidence and proved documents Exhibit RW-4/1 to RW-4/17.
26. OP-5 filed affidavit of Dr. Vritti Jumb. In the opening lines of affidavit she stated that she had gone through the records and familiarised herself with facts and circumstance of the case and was competent to depose by way of affidavit on behalf of OP-5.

This means that she had no personal knowledge about the case and her evidence is not much reliable.

27. The complainant filed written arguments re-asserting her case as set up in the complaint.
28. OP-1 filed written arguments though there is no WS on behalf of OP-1. It referred to the decision of Hon'ble Supreme Court in martin F. D. Souza for the purpose of obtaining expert opinion before summoning a doctor.
29. OPs 3 to 5 filed written arguments. According to them edometrium TB is world wide known cause of infertility amongst women.
30. I have gone through the material on record and heard the arguments. The objection regarding non obtaining of expert opinion before summoning the OPs is turned down in view of subsequent decision of Hon'ble Supreme Court in V. Krishna Rao Supra.
31. Plea regarding limitation can not be sustained in view of decision of Hon'ble Supreme Court in V.N. Shrikhande Supra. The reason is that in case of medical negligence a patient is not aware about the negligence committed by doctor. It is only after he or she takes opinion from second doctor who points out that there is a deficiency in earlier treatment, that the complainant would come to know Cause of action would start from said later date. The complainant has clearly pleaded that she came to know about the deficiency only on consulting Dr. Vivek Marwah in July, 2013. The complainant is within limitation from said date.
32. On merits the complainant has relied on opinion of Dr. Radh Swami, MD, DGO which is at pages 128 and 129 of set of evidenc

of complainant. It recites that the complainant was diagnosed with heavy edometrium TB based only on procedure PAMP test. PAMP test is not a confirmatory test for edometrium TB. ECR is another test which can be correlated with edometrium TB. The ESR on 22.09.11 was 14 mm per hours whereas on 21.12.11 when she was diagnosed with having edometrium TB, ESR was only 8 mm per hour. On 07.06.12 past pregnancy, ESR was 17 mm per hour. This goes against the diagnosis of edometrium TB.

33. The complainant has also relied upon opinion of Dr. Punit Bedi, MD, Sr. Consultant, Obstetrics and Gynaecology which is at page 125 to 127 of the set of evidence by affidavit of complainant. She has mentioned that OP-2 did not say in her prescription but symptoms led her to suspect uterine TB. The Ministry of Health and TB control program and various government authority regulating medical practices have banned the test adopted by OP-2. To advice to plan a baby immediately after starting TB medicines is not a correct devise. D&C should not be advised unless and until grave circumstances are there. Primary steps for young couple should be natural evacuation or medical therapy.

34. Complainant has also relied upon the report appearing at page 116 that Union Health Minister has banned the import sero diagnostic kits, saying it is giving inconsistent and imprecise results leading to wrong diagnosis of the deadly air born disease. Heading is 'Ban on inaccurate blood tests to diagnose TB'. Complainant has also filed literature regarding Asherman's Syndrome which is at page 120.

35. The argument of defence counsel is that negligence must be culpable or gross and not error of judgement. Simple lack of care, error of judgement is no negligence. It is not possible to have highest level of expertise. The OP-2 and 4 are qualified doctors. They have tried their best. Simply because the complainant could not get success, there is no medical negligence.
36. To some extent the arguments of OPs are correct. But a doctor can not be allowed to misguide the patient just for earning money. He is not expected to make the patient scared and advise un-necessary costly tests. The test conducted on complainant for ascertaining TB was banned, conception during TB is not desirable. Despite that she was advised to plan for baby immediately.
37. The act and conduct of OP-4 in doing D&C second time to remove the left out part is highly condemnable. In the process she scratched the uterus so extensively that it damaged the wall of endometrium causing the very rare disease known as Asherman Syndrome that led to serious problems to the complainant. It is only when the complainant reached Dr. Vivek Marwah of Max Hospital that she could get rid of the melody.
38. In CC no.104/02 titled as Dr. (Ms.) Indu Sharma, I.P. Apollo Hospital decided on 22.04.15 National Commission held that birth of a child is a joyous occasion in the family. Unless they are able to see the child with all the five toys of both hands and both legs in healthy condition, they are not satisfied. In the instant case the conduct of OP-2 and 4 in marring the hopes of complainant to



conceive a child for a long period shows extent of culpability on the part of OPs.

39. However OP-3 and 4 both have taken a defence that OP-4 never worked with OP-3. There is no document on record to show that complainant ever visited OP-3. Thus OP-3 can not fastened with the liability.

40. To sum up I find OP-1, 2, 4 and 5 guilty of medical negligence and deficiency in service. However the complainant has not pleaded as to what are her professional qualifications or earnings. So her claim to the tune of Rs.18 lakhs as compensation for professional earnings is declined. I feel that she is entitled to Rs.5 lakhs jointly and severally OP-1, 2, 4 and 5 paid by her towards cost of hospital expenses, diagnosis tests, medicine and conveyance as claimed by her. She is also entitled to a compensation of Rs.10 lakhs from OP-1 and 2 jointly and severally. She is entitled to compensation of Rs.10 lakhs from OP-4 and 5 jointly and severally. She is also entitled to cost of litigation amounting to Rs.50,000/- jointly and severally from OP-1, 2, 4 and 5. The OPs are directed to comply with the order within 45 days from receipt of copy of this order failing which they would be liable to pay interest on the awarded amount at the rate of 9% per annum from the date of filing the complaint till the date of payment.

41. Before parting with the records it is necessary to mention that complainant has moved an application under Section 340 Cr. P.C read with Section 195 (1) Cr.P.C. read with Section 192 IPC for initiating enquiry against OP-4 and 5 for giving false with fabricated

evidence before this Commission alongwith supported affidavit. According to her Annexure R-4 to WS of OP-4 which is at page 26 of the bunch of WS of OP-4 and is titled as consent form for surgical operation, anaesthesia treatment is false and fabricated. The words "plus IUSD" in the said form which have been encircled red by me on Annexure-4 have been added later on by someone else. The complainant has filed report of hand writing expert. In his opinion "plus IUCD insertion" is different with other text, it is different in right formed and left formed and shows that the same was later on added by someone else. The same is not in writing of the person who has written text earlier. Meaning thereby it is no right of the person who has written "D/C USG".

42. OP-4 has filed a reply to the application denying that there is any fabrication or falsification. The perusal of bill which have been cleared by complainant's husband and herself shows that they were not tricked into alleged billing of insertion of ICUD. The bills were clearly without any objection by the complainant's husband as is evident from bill dated 11.04.12 Exbt. RW-1/14

43. I have gone through the material on record and heard the arguments for the purpose of this application. The report of hand writing report is not from the government expert or CFSL. It is from a private hand writing expert engaged by complainant. It is matter of common knowledge that private experts do give report in favour of the present engaging them. Such reports do not deserve much credence.

44. A bare perusal of the disputed words on the consent form reveal that they are in the hand writing of same person who wrote the preceding words "D/C USG".
45. Still further Section 340 CRPC should be invoked rarely only when it is expedient in the interest of justice to do so. It is not meant for ventilating the grievances of private litigants. Consequently the application is dismissed.
46. Copy of the order be sent to both the parties free of cost.
47. File be consigned to record room.

~~(O.P. GUPTA)~~  
MEMBER (JUDICIAL)<sup>nx</sup>