

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 428 OF 2018

1. VINOD KHANNA

.....Complainant(s)

Versus

1. R.G. STONE UROLOGY AND LEPROSCOPY HOSPITAL
& 2 ORS.

Through its Chairman F-12, East Of Kailash, New Delhi-
110065

2. DR. ANIL VARSHNEY

S/o Shri SN Varshney R/o 58, Engineers Enclave, Pitampura,
New Delhi.

3. THE NEW INDIA ASSURANCE CO.LTD.

Regional Office At R.G City Centre, 2nd Floor, LSC, Block-B,
Lawrence Road, New Delhi-110035

.....Opp.Party(s)

BEFORE:

**HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER
HON'BLE MR. DINESH SINGH,MEMBER**

For the Complainant :

For the Opp.Party :

Dated : 06 Jul 2020

ORDER

APPEARED AT THE TIME OF ARGUMENTS

For the Complainant :Mr. G.P Thareja, Advocate

Mr. Satyam Thareja, Advocate

Mr. Suyash Rawat, Advocate

For the Opposite Parties : Mr. Jeevan Prakash, Advocate for OP No.1 &2

Mr. A.K Prasad, Proxy Counsel for OP No.3

Pronounced on: 6th July 2020

ORDER

PER DR. S. M. KANTIKAR, PRESIDING MEMBER

1. The Complainant Vinod Khanna aged about 65 years (for short "the patient") in second week of January, 2010 suffered pain in abdomen and difficulty in passing urine. He was rushed to emergency

department of Fortis Hospital at Vasant Kunj, New Delhi and after cauterization urine was removed. Thereafter, due to financial difficulties, for further treatment, he approached Dr. Anil Varshney (OP-2) at RG Stone Urology and Laparoscopy Hospital (OP-1 – for short “hospital”). The OP-2 examined the patient and advised surgery for to remove pus and also if required, removal of prostate. Ultrasonography (USG) study was performed and the patient underwent surgery on 13/01/2010. The OP-2 removed the pus and prostate. Total bill incurred by the patient was ₹1,04,725/- The patient was discharged on 15/01/2010 with catheter placed in the bladder for five days. On 18/01/2010 patient approached OP-1 hospital for the complaints that after surgery the he started passing urine from the rectum instead of his urethra. The OP-2 after examination informed the patient that the complication occurred and advised for natural healing, re-insertion of the catheter for further six weeks. Being worried, the Complainant approached Dr. Ajit Saxena at Indraprastha Apollo Hospital and he got admitted and took treatment from 19/01/2020 to 04/02/2010. Thereafter, was under follow-up at Indraprastha Apollo Hospital on 15/02/2010, 18/03/2010 and 23/03/2010. For his treatment incurred about ₹1,30,791/- expenditure at Indraprastha Apollo Hospital. However, patient did not get complete cure. Thereafter, on 13/04/2010 patient reverted to Fortis Hospital at Vasant Kunj and discharged on 21/04/2010. He further incurred ₹1,15,640/- for the treatment. Thereafter, he was visiting regularly to the Fortis Hospital.

2. Being aggrieved by the negligent treatment at OP-1 the Complainant suffered injury and complications at the hand of OP-2, complainant filed the instant complaint before this Commission and prayed compensation of ₹1,88,37,602/-.
3. The OPs 1 and 2 resisted the complaint and denied the allegations. The OPs took preliminary objection of limitation as the instant complaint was filed in year 2018, i.e. after 8 years of cause of action which arose in year 2010. The OPs further submitted that the Complainant had prior surgery of hernia and appendix with history of tuberculosis and acquired immune deficiency syndrome (HIV). It was submitted that prior to visit to OP-1 Hospital, he approached few renowned hospital in Delhi, but could not get the treatment. At OP-1 repeat USG confirmed the diagnosis as grade III benign enlargement of prostate (BEP) with multiple abscess cavities and some of them found fluctuating and communicating to posterior side of nodules which might be due to immuno-compromised status of the patient.
4. On 13/01/2010, the patient was admitted for the planned surgery for prostatic abscess de-roofing. He was known case of HIV positive, cryptococcal meningitis, Kaposi's sarcoma and tuberculosis. The surgery was uneventful, lasted for about an hour. As a standard procedure OP-2 did per rectal examination and needle was put in the cavity, but no pus came out. Cystoscopy was done and urethra was found normal. De-roofing of the prostate was done and the Foley's catheter placed. All required post-operative due care was taken. The patient was discharged on 15/01/2010 and called for follow up on 18/01/2010.
5. On 18/01/2010, on removal of Foley's catheter, it was noted that the patient passing urine through rectum which was a rare complication. The patient was properly explained and counseled about such known rare complication. It was unavoidable because of the fistula with multiple cavities communicating to the posterior side. It was due to the necrosis of rectal wall due to the existing abscess cavity which facilitated urine passages communicating with rectum. Majority of fistulae heal on its own over a period of time and the healing depends upon patient's immunity. In the instant case the patient was severely immunocompromised, the recovery was bound to be slow. Such patients could be treated by further procedure for diversion of urine and faeces by suprapubic cystotomy and colostomy. Till then, the patient was re-catheterized to facilitate urinary passage and call for review after two weeks. However, the patient abandoned the treatment of OP-1 and the very next day i.e on 19/01/2010 went to Apollo Hospital.
6. Both the parties have filed their respective affidavits of evidence. Heard the arguments from both the sides. Perused the material on record.
7. We have perused the application for condonation of delay filed by the complainant. Initially on 13.07.2010 the Complainant filed a complaint before the State Consumer Disputes Redressal Commission, Delhi (for short the 'State Commission') with the allegations that he is still urinating

from rectum. The complaint was disposed of by State Commission on 16.08.2017 on the ground of lack of pecuniary jurisdiction. We note the time of seven years was elapsed before the state commission and the instant complaint was filed before this commission on 15.02.2018. Considering the factual position in our considered view the cause of action was continuous, therefore this present complaint is maintainable before this commission, and the delay is condoned.

8. We further note that, the patient suppressed in the pleadings that he was cured after surgery with medicines within six weeks of the discharge from OP-1, RG Stone. The medical record of Fortis Hospital, on 02/08/2010 it was recorded that "No urine per rectally, Fistula healed".
9. The contention of the complaint of the Complainant about the penetration of the needle through the common wall of the rectum and urinary bladder has facilitated a way to urine to make a passage through rectum. We do not agree with the submission, as per medical literature the injection pricks does not cause fistulae or grave injury. Commonly to drain prostatic abscess trans rectal needle aspiration is used.
10. We took reference from the standard books on Surgery, Urogenital Pathology. The Prostatic abscess is a rare clinical entity. The safety and efficacy of trans-rectal ultrasound (TRUS) guided aspiration of prostatic abscess (PA) is known. Trans-rectal ultrasound (TRUS) is considered to be a sensitive tool from a diagnostic and therapeutic standpoint. The variety of therapeutic options available for managing Prostatic abscess includes drainage either using the trans-rectal, trans-urethral, or trans-perineal route under TRUS guidance.

The sequelae of Prostatic abscess are spontaneous rupture of abscess into the urethra, perineum, bladder, or rectum, chronic prostatitis, etc. A variety of organisms are responsible for its causation, which include gram-negative bacilli *Esh.coli* and the Staphylococci.

Needle aspiration is a viable treatment option for deeply seated body abscesses, which could be used by different approaches. In urological practice, needle aspiration has been used to treat renal, peri renal and pelvic abscesses. Unlike de-roofing, the endpoint of TRUS-guided aspiration of a prostatic abscess is controlled by simultaneous US. Despite that drainage might be more complete with deroofting, the multiplicity of abscesses in a large prostate can be a limitation to the deroofting procedure

1. We have perused the report (opinion) of the medical board constituted three independent doctors at Maulana Azad Hospital, New Delhi namely (1) Dr. R.K Jindal, Director Professor (Surgery) as Chairman, (2) Dr. M.K Daga, Director Professor (Medicines) and (3) Dr. Anubhav Vindal, Associate Prof (Surgery) as members. The board examined the medical records of the case in detail and had not found any negligence in this matter.
2. We have perused the consent form and found that the deroofting surgery performed by OP-2 was after taking due informed consent. The medical record of Apollo Hospital (page 26) and Fortis Hospital (page 38) clearly mentioned that the fistula healed by conservative management with medicines for six weeks only. According to Dr. Ajit Saxena of Apollo Hospital, he prescribed the patient to take tablet Tropan 2.5 mg BD for four weeks. From 19/01/2010 the rectal leakage was found to have reduced to 10% on 05/02/2010 i.e within 15 days. As per the medical record of Apollo Hospital, on 18/03/2010 there was no rectal leakage. Thus, within six weeks the problem of Complainant was over by medicines only. According to the surgical notes of Dr. Nalin Nag of Apollo Hospital, it was mentioned that fistula closed spontaneously. Thereafter, patient approached Fortis Hospital on 14/07/2010 wherein nothing was mentioned about evidence of recto-urethral fistula. Thus, the 1st complaint filed before the State Commission was on false ground and wrong premise.
3. On the basis of the entire medical record, the affidavits of the OPs -1 & 2 and the expert opinion of the medical board of Maulana Azad Medical College, we do not find any deficiency in service or medical negligence in this case.
4. However, we cannot ignore the peculiarity of the 'informed consent' in the instant case which needs prompt and proper rectification. It is pertinent to note that it is a pre-printed form- 'informed consent cum undertaking' having blank spaces for limited selective handwritten entries and for the signatures. The main body of the form is fixed pre-printed. Such consent form fits into any procedure, any doctor,

and any patient. Thus, it will take shape of informed consent if someone after filling up the blank spaces in handwriting and affixing the signatures of the patient and his sister as witness. This to be administrative arbitrariness and one-sided high handedness, and to be unfair and deceptive, on the part of the OP-1 (hospital); though the complainant has not been prejudiced in this particular case.

5. In the instant case, the Complainant/patient was suffering from HIV and skin cancer, he is fully aware about his immune-compromised status. Despite such HIV positive status, the OP-2 operated the patient with all due care and reasonable skill. However, the Complainant with his ill intention published a story against the hospital in the 'Hindustan Times' to influence the court. Thereafter, the hospital explaining the real facts, the Hindustan Times published the rejoinder and also sought apology from the hospital. Thus, the Complainant was trying to coerce the hospital and influence emotionally for out of court settlement.
6. Considering the entirety, it is clear that the allegations of complainant are completely after thought based on assumptions, surmises and perverse beliefs. The Complainant/patient was treated as per the standard norms. The complainant failed to establish the breach of duty of treating doctor - OP-2 and resultant injury was the proximate cause from the breach. We do not find any deficiency in service / medical negligence on the part of the doctor (OP-2) and the hospital (OP-1). The complaint is frivolous, bereft of merit and ill-conceived.
7. With reference to our observations (supra) on the 'informed consent' (para 14), we but determine the uniform use of this pre-printed and fixed 'informed consent cum undertaking' form on the part of the OP-1 (hospital) to be unfair trade practice within the meaning of section 2(1)(r) of the Act 1986 and deem it just and appropriate to impose a cost of Rs. 10 lakh on the OP-1 (hospital), to be deposited with the Consumer Legal Aid Account of this Commission within four weeks of the pronouncement of the reasoned judgement, and to direct the OP-1 (hospital) to discontinue its said unfair trade practice with immediate effect.
8. The Complaint is dismissed with the above direction to the hospital.

Per Hon'ble Dr. S.M. Kantikar and Hon'ble Mr. Dinesh Singh

9. We summarize as follows:

[a] On the basis of the entire medical record and the evidence on file including *inter alia* the expert opinion of the medical board of Maulana Azad Medical College, New Delhi, we do not find any deficiency in service / medical negligence / unfair trade practice on the part of the opposite party no. 2 (doctor).

[b] In respect of 'consent', in this particular case, having regard to the signatures of the patient and his sister as witness on the 'informed consent cum undertaking', the entire medical record, the affidavit of the opposite party no. 2 (doctor), the affidavit of the opposite party no. 1 (hospital) and the expert opinion of the medical board of Maulana Azad Medical College, we find it to be 'informed consent'.

[c] We do not find any deficiency in service / medical negligence on the part of the opposite party no. 1 (hospital).

[d] We but note that a pre-printed and fixed 'informed consent cum undertaking' form, with blank spaces for limited select handwritten entries and for the signatures has been used. The main body of the form is pre-printed and fixed. It can fit into any procedure, any doctor, and any patient, after filling up the blank spaces for the limited select handwritten entries and getting / affixing the signatures. We note this to be administrative arbitrariness and one-sided high handedness, and to be unfair and deceptive, on the part of the opposite party no. 1 (hospital), for which, though, the complainant has not been prejudiced in this particular case.

[e] The complaint, in this particular case, is dismissed.

[f] We but determine the uniform use of this pre-printed and fixed 'informed consent cum undertaking' form on the part of the opposite party no. 1 (hospital) to be unfair trade practice within the meaning of

section 2(1)(r) of the Act 1986 and deem it just and appropriate to impose a cost of Rs. 10 lakh on the opposite party no. 1 (hospital), to be deposited with the Consumer Legal Aid Account of this Commission within four weeks of the pronouncement of the reasoned judgement, and to direct the opposite party no. 1 (hospital) to discontinue its said unfair trade practice with immediate effect.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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DINESH SINGH
MEMBER