NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 1485 OF 2016

1. RENUKA MALL
Through her Power of Attorney Holder, Mr. N.K. Mall, R/o. V-9, First Floor, ELDECO, Greens Meadows,
GREATER NOIDA,
GAUTAMBUDH NAGAR .....Complainant(s)

Versus

1. DR. MOHIB HAMIDI & ANR.
R/o. 001, F-1, Staller Apartments, Sigma-4 Greate Noida,
U.P.
2. YATHARTH WELLNESS SUPER SPECIALTY HOSPITAL
Plot No. 32, Omega 1st,
GREATER NOIDA
U.P.
3. .
,
. .....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR. KUMAR DUSHYANT SINGH, ADVOCATE,
MS. SUBASRI JAGANATHAN, ADVOCATE

FOR THE OPP. PARTY : FOR OPPOSITE PARTY-1 : MR. K.G. SHARMA, ADVOCATE
FOR OPPOSITE PARTY-2 : NEMO

Dated : 08 December 2023

ORDER

1. Heard Mr. Kumar Dushyant Singh, Advocate, for the complainant and Mr. K.G. Sharma, Advocate, for opposite party-1.

2. Mrs. Renuka Mall has filed above complaint for directing the opposite parties, jointly and severally, to pay (i) Rs.10000000/- with interest @24% per annum, from the date of filing of the complaint till the date of payment, as compensation for deficiency in service, mental agony and harassment; (ii) Rs.800000/- with interest @24% per annum, from the date of filing of the complaint till the date of payment, towards medical expenses incurred by her; (iii) Rs.100000/- as litigation costs; and (iv) any other relief, which is deemed fit and proper in the facts and circumstances of the case.

3. The complainant stated that Mrs. Renuka Mall (the patient) was a lady of an entrepreneur, happens to be very hale and hearty and having very good health appetite. The patient realized pain in lower abdomen and visited Dr. Sanchita Biswas, M.D. and discussed

with her as a OPD patient at Kailash Hospitals Ltd. on 07.04.2015, who advised for ultrasound of whole abdomen. In ultrasound report dated 07.04.2015, presence of cyst in ovary was found, while both the kidneys were found in normal size, shape & position and no calculus was seen. MRI of pelvis was also conducted and report dated 07.04.2015 revealed complex right tubo-ovarian space occupying lesion with grossly dilated right fallopian tube and a large well defined cyst with haemorrhage content. The patient showed her reports to Dr. Sanchita Dube Ghonge on 08.04.2015 and consulted with her, who advised for surgery after menses. The patient again consulted with Dr. Sanchita Biswas on 09.04.2015, who advised for removal of uterus and ovary. N.K. Mall, the husband of the patient talked Dr. Mohib Hamidi (OP-1) on 14.04.2014 on phone to discuss above problem. During discussions, OP-1 asked to meet him on the next day at Yasharth Wellness Super Specialty Hospital (OP-2). The patient along with her husband went to the hospital (OP-2) on 15.04.2015 and met with OP-1, showed her medical reports and discussed with him. OP-1 assured them that there was nothing to worry and he would operate and remove the uterus and ovary. He also told that the menses was not a problem for operation and asked to admit in the hospital (OP-2) on the next day for operation. The husband of the patient asked to conduct operation in Max Hospital as OP-1 was also associated with Max Hospital, which was better equipped with medical facilities, OP-1 confidently convinced the patient and her husband that the hospital OP-2 had same facilities and in fact provides better services that any other hospital. Believing upon honey coated words of OP-1, the patient and her husband decided for operation in the hospital OP-2 and got admitted on 16.04.2015. The patient asked for presence of a lady gynaecologist at the time of operation, for which, OP-1 assured. OP-1 conducted operation of abdominal hysterectomy on 16.04.2015 and removed uterus and ovary of the patient, without there being any lady gynaecologist. After operation, the patient was shifted in room, in the hospital OP-2, where she remained admitted for six days and discharged on 21.04.2015. Before discharge, USG screening of the complainant was conducted on 21.04.2015 and USG screening report dated 21.04.2015 noted “left side mild hydronephrosis” in the kidney of the patient, which was also pointed out by the husband of the patient to OP-1 but OP-1 did not prescribe any medicine for it and ignored it. Pain in back left side abdomen started to the patient on 27.04.2015, then she again visited the hospital OP-2 on 27.04.2015 and met with OP-1, who again admitted her in the hospital and once again carried USG screening and again in the report dated 27.04.2015, noted “left side mild hydronephrosis” in the kidney of the patient. However, again no treatment or precaution was prescribed by OP-1 and 2 and they ignored symptom of ureter failure. At this time, the patient was admitted for three days in the hospital OP-2 and discharged on 29.04.2015. Suffering of the patient did not end and regular discharge started. The husband of the patient discussed the problem with OP-1, who advised to consult with Dr. Suman Mahela (gynaecologist) in the hospital OP-2, then the patient along with her husband visited the hospital OP-2 on 25.05.2015 and consulted with Dr. Suman Mahela, who prescribed some medicines. In continuation of suffering now in the form of problem of involuntary leakage of urine started, then the patient again visited the hospital on 27.05.2015 and the patient was admitted in emergency by OP-1. The cystoscopy + bilateral RGP (Retro Grade Pyelogram) with left URS (Ureteroscopy) were done by Dr. Manoj Agarwal in the hospital OP-2. This time also, no lady gynaecologist was present. Although the patient was diagnosed of urinary incontinence but OP-1 prescribed for cystoscopy test. The OPs did not supply the test reports. The patient was discharged on 28.05.2015. The patient did not get any relief. In continuation of her suffering, she again visited the hospital OP-2 on 03.06.2015. At this time,

she was told to carry out her Vesico Vaginal Fistula (VVF) repair. VVF is an abnormal fistulous tract extending between the bladder and the vagina that allows the continuous involuntary discharge of urine into vaginal vault. Said VVF had been developed due to negligence in carrying out aforesaid operation of the patient. OP-1 once again admitted the patient on 03.06.2015, in the hospital OP-2. USG abdomen whole of the patient was carried out. In the USG report dated 03.06.2015 noted "left side mild hydronephrosis" in the kidney of the patient. The patient was operated for Endopylotomy + Ureteroscopy + VVF repair on 08.06.2015 by the team of Dr. Mayank, Dr. Manoj and Dr. Mohib Hamidi. The operation continued for eight hours. Ureteroscopy was done without any prior information to the patient and her husband. The OPs again did not supply the test reports. VVF repair failed as leaking again started after eight days of surgery. The OPs discharged the patient on 17.06.2015 and referred to Urology Department of A.I.I.M.S., New Delhi for expert opinion and further management. The patient visited A.I.I.M.S., New Delhi on 17.06.2015 and consulted with Dr. Prabhjot Singh. The patient thereafter consulted with Dr. Mayank Gupta on 14.07.2015, 17.07.2015 and 31.07.2015, who prescribed some medicines. Although the patent followed the prescription but did not get any relief. The patient went to Max Hospital on 12.08.2015, where she was examined by Dr. (Prof.) Anant Kumar, who advised for CT scan. CT scan report dated 14.08.2015 showed that left ureter was damaged, due to post surgery, which in turn caused delayed excretion in left kidney. The patient went to A.I.I.M.S., New Delhi on 11.09.2015 and consulted with Dr. Ashish Saini, who advised to carryout cystoscopy, which was done and the report dated 11.09.2015 showed there were openings in bladder due to earlier surgery. The patient again visited Dr. (Prof.) Anant Kumar on 21.09.2015, who advised for 'kidney function test', which was done in Jaypee Hospital on 22.09.2015 and in the report it was found that left kidney was not functioning properly. The patient again went to A.I.I.M.S., New Delhi on 24.09.2015 and consulted with Dr. Ashish Saini, to save her kidney, who advised for using catheter. Accordingly catheter was put upon the patient. On 09.10.2015, nephrostogram was conducted in A.I.I.M.S., New Delhi and report dated 16.10.2015 was given, showing no improvement. Due to continuous suffering, the patient was advised to remove left kidney. Thereafter, the patient was admitted in Max Super Specialty Hospital, Saket for VVF repair and removal of left kidney, where left laparoscopic nephrectomy with cystoscopy + right DJ stenting + laparoscopic VVF repair were done on 28.10.2015 and she was discharged on 02.11.2015. The complainant alleged that in Ultrasound Reports dated 21.04.2015, 27.04.2015 and 03.06.2016 "left side mild hydronephrosis" in the kidney of the patient was found but the OPs did take any step for its treatment and committed gross negligence in treatment of the patient. Due to prolonged hydronephrosis, her left kidney was damaged. During treatment right from 07.04.2015 till her discharge on 02.11.2015, the patient spent huge amount of money in her treatment, travelling etc. She suffered lot of pain and her entire family suffered from mental agony. Her elder son was studying B.S. (Engineering) in USA at State University of New York. Due to prolonged critical condition of his mother, he had to visit India several times during this period. Younger son was studying in 12^{th} class. Due to illness of the mother, his study was also seriously affected. The complainant was doing business in the name of M/s. ACG Infratech. Due to her illness, turnover of her firm has got down to Rs.34/- lacs in the year 2015-2016 from Rs.2/- crores in previous year. On account of above losses, consolidated damage of Rs.one crore has been claimed. The complainant gave legal notice dated 15.02.2016, calling upon the OPs to pay above damages. OP-1 in his reply notice dated

03.03.2016, denied his liability. Then this complaint was filed on 08.09.2016, alleging deficiency in service on the part of the OPs.

4. Dr. Mohib Hamidi (OP-1) filed his written reply and stated that he had passed MBBS in 1980 and MS in 1984. He was enrolled as medical practitioner with Medical Council of India on 12.07.1980 and remained associated with reputed hospitals/institutions in NCR and had vast experience in general and laparoscopic surgery. He had been keeping himself updated in the requisite skill and knowledge through various conferences and programmes. He had clean and spotless professional career record and had Professional Indemnity Insurance Policy from United India Insurance Company Limited on 16.04.2015, which is a necessary party in this complaint. Yasharth Wellness Super Specialty Hospital (OP-2) was a 100 bedded hospital, having multi-specialties facilities. Investigations done by Dr. Sanchita Biswas on 07.04.2015 revealed that the patient was suffering from fibroids in uterus and suspected to have developed endometrioma in tubo ovarian space (left and right) and had cyst in left adnexa with mildly dilated fallopian tube. Dr. Sanchita Biswas recommended for TAH. Dr. Sanchita Dube Ghonge advised for BSO + TAH with BSO on 08.04.2015 to the patient. As the husband of patient knew OP-1, he approached him for surgery of the patient. He denied that he had given any assurance to them. The patient was admitted in emergency on 16.04.2015 with complaint of pain in lower abdomen with heavy flow discharged during month and severe dysmenorrhea. USG dated 07.04.2015 confirmed presence of large right tubo ovarian mass (cyst of 6.8 cms size) and the MRI pelvis dated 07.04.2015 revealed that the patient had fibroids in uterus and she was suspected to have developed endometrioma in tubo ovarian space (left and right) and had also cyst in left adnexa with mildly dilated fallopian tube. All preoperative investigations and evaluations were done. After assessing the fitness, the patient was planned to be taken up for surgical management and shifted to operation theatre. Total abdomen hysterectomy with ovariectomy was done on 16.04.2015 under general anaesthesia administered by Dr. Parul and specimen was sent for histopathology. There were lot of adhesions in surgery of the patient, which took about three hours. After surgery, the patient was shifted to intensive care unit and on finding vitals satisfactory, the patient was shifted to the room, where she was managed by IV antibiotics, IV analgesics, IV PPI and supportive treatment. After satisfactory recovery, the patient was discharged on 21.04.2015 with follow up requisite medication. He treated the patient as per standard medical protocol applicable in such cases. On 25.04.2015, the patient complained of gastritis. After requisite tests/investigations, she was diagnosed as a follow up case of TAH with gastritis. She was admitted on 27.04.2015 and treated conservatively. When her condition became stable, she was discharged on 29.04.2015. There was no symptom of ureter failure at that time as alleged. The patient again visited the hospital OP-2 on 25.05.2015 with complaint of ‘dribbling urination during coughing’ and advised to consult with Dr. Suman Mahela (gynaecologist) in the hospital OP-2. Dr. Suman Mahela, prescribed some medicines to control bacterial infections. The patient again visited the hospital on 27.05.2015 with complaint of ‘involuntary leakage of urine’ and admitted in the hospital OP-2, in emergency. She was diagnosed with ‘urine incontinence’. Her cystoscopy + bilateral RGP (Retro Grade Pyelogram) with left URS (Ureteroscopy) were done by Dr. Manoj Agarwal (Urologist) in the hospital OP-2. The patient was discharged on 28.05.2015, after becoming stable. It has been denied that any report was withheld or concealed. By that time, histopathology report of the sample of uterus, sent after TAH for examination, was received which showed ‘endometriosis’. The patient developed Vesico Vaginal Fistula (VVF), a known complication

of Total Abdominal Hysterectomy and she was admitted on 03.06.2015 for VVF repair. After all preoperative tests/investigations, the patient was operated on 08.06.2015 and Endopylotomy + Ureteroscopy + VVF repair were done by the team of urologists Dr. Mayank and Dr. Manoj Agarwal in presence of Dr. Mohib Hamidi. Urologist tried to trace left ureter but could not find due to severe endometriosis. OP-1 tried with conservative management of VVF but the patient did not respond and again complained of leaking after eight days of VVF repair. Then she was referred to Urology Department, AIIMS, New Delhi on 16.06.2015 for further course after explaining the nature of the complication to the patient and her husband and discharged on 17.06.2015. Her problem was due to 'endometriosis' and not due to any negligence committed him during her treatment. According to medical literature chances of VVF and involvement of ureter is more in people having 'endometriosis'. More than 50% Vesico Vaginal and Ureterovaginal Fistula occur after hysterectomy for benign diseases such as uterine fibroids, menstrual dysfunction and uterine prolapse. Incident of Vesico Vaginal fistula resulting from hysterectomy is estimated to be less than 1%. Endometriosis is defined as the presence of endometrial-like tissue outside the endometrial cavity and uterine musculature. It has been estimated to affect 10% to 20% of the general women but approaching 30% to 40% in infertile women. It is most commonly diagnosed in women of reproductive age, with peak age of 40 to 44 years. The main location of endometrial tissue is in the pelvis, exceptionally can be located in urinary tract. However, extra-pelvic endometrial tissues have been found in nodes and gastrointestinal tract. Relative frequencies of involvement of bladder, ureter and kidney are in the ratio of 40:5:1 respectively. In ureteral involvement, ratio of left to right is 4:1, more commonly involving the distal segment of the left ureter. Symptom depends on the site of endometrial implantation and severe disease can lead to pain and infertility due to extensive adhesions and distortion of anatomy. But clinical characteristics of ureteral endometriosis is typically marked by non-specific symptoms and as many as 50% of patients are often asymptomatic. So ureteral endometriosis can potentially lead to serious consequences such as urinary tract obstruction and finally silent loss of renal function. Risk of silent renal loss is reported to be as high as 25%-50%. Because of non-specific symptoms, insufficient preoperative evaluation, misinterpretation of imaging techniques or no-specific imaging findings, ureteral endometriosis is suspected before surgery in only 40% of the patients. CT Scan dated 14.08.2015 issued by JP Hospital was almost after two months of reference of the patient for higher center. He adopted Standard Procedure and prescribed Protocol during treatment and did not commit any negligence. Exorbitant claim has been made although removal of one kidney does not affect normal life of any person and there could be no loss of income. The complaint is liable to be dismissed.

5. Yasharth Wellness Super Speciality Hospital (OP-2) filed its separate written reply on 30.01.2017 and admitted that Dr. Mohib Hamidi was associated with its hospital during treatment of the complainant in April–June, 2015 in its hospital. OP-2 adopted the written reply of OP-1 in material particular and made similar allegations.

6. The complainant filed Rejoinder Replies, Affidavit of Evidence, Affidavit of Admission/Denial of N.K. Mall and documentary evidence. Opposite party-1 filed Affidavit of Evidence, Affidavit of Admission/Denial of the documents of Dr. Mohib Hamidi and documentary evidence. The complainant and opposite party-1 have filed written synopsis.

7. I have considered the arguments of the counsel for the parties and examined the record. Discharge Summary dated 21.04.2015 (Annexure-C/8) shows that the patient was admitted in emergency on 16.04.2015 with complaint of 'pain in lower abdomen with heavy flow discharged during month and severe dysmenorrhea'. USG dated 07.04.2015 (Annexure-C/3) confirmed presence of large right tubo ovarian mass (cyst of 6.8 cms size) and the MRI pelvis dated 07.04.2015 (Annexure-C/4) revealed that the patient had fibroids in uterus and she was suspected to have developed endometrioma in tubo ovarian space (left and right) and had also cyst in left adnexa with mildly dilated fallopian tube. OP-1 stated that all preoperative investigations and evaluations were done. After assessing the fitness, the patient was shifted to operation theatre for surgical management. Total abdomen hysterectomy with ovariectomy was done on 16.04.2015 under general anaesthesia administered by Dr. Parul and specimen was sent for histopathology. There were lot of adhesions in surgery of the patient, which took about three hours. After surgery, the patient was shifted to intensive care unit and on finding vitals satisfactory, the patient was shifted to the room, where she was managed by IV antibiotics, IV analgesics, IV PPI and supportive treatment. After satisfactory recovery, the patient was discharged on 21.04.2015 with follow up requisite medication.

8. First allegation of the complainant that she had asked for presence of a lady gynaecologist at the time of operation, for which, OP-1 had assured, is not proved. However, at the time of operation, Dr. Parul, a lady anaesthetist, was present. It is admitted that before coming to the OPs, the complainant had consulted two lady gynaecologists, namely Dr. Sanchita Biswas on 07.04.2015 and Dr. Sanchita Dube Ghonge on 08.04.2015 and both of them had advised for 'total abdominal hysterectomy' and the complainant herself chose OP-1 for surgery.

9. The complainant alleged that before discharge, her USG screening was conducted on 21.04.2015 and USG report dated 21.04.2015 noted "left side mild hydronephrosis" in her kidney, which was also pointed out by her husband to OP-1. USG screening was again conducted on 27.04.2015 and USG report dated 27.04.2015 also noted "left side mild hydronephrosis" in her kidney but OP-1 did not prescribe any medicine for it and ignored it. Due to prolonged hydronephrosis, left kidney was damaged. OP-1 has stated that "left side mild hydronephrosis" in her kidney was noticed. As it was in mild nature, he prescribed strong antibiotic tab Ceftum-500- 1 tab BD (twice daily), as noted in 'discharge summary' dated 21.04.2015 (Annexure-C/9) as in his diagnosis it might be due to bacterial infection. In 'discharge summary' dated 29.04.2015 (Annexure-C/10), she was called for review after 3 days. It is not proved that the patient came for review after 3 days. After discharge on 29.04.2015, she came to the OPs on 25.05.2015 with complaint of 'dribbling urination during coughing' and attended by Dr. Suman Mehla. From 27.05.2015, she was attended by Dr. Manoj Agrawal (Urologist) and Dr. Mayank (Urologist). The patient was referred to Urology Department, AIIMS, New Delhi on 16.06.2015 for further course after explaining the nature of the complication to the patient and her husband. The complainant did not make any allegation of negligence against Dr. Suman Mehla, Dr. Manoj Agrawal and Dr. Mayank.

10. The complainant alleged that CT scan report dated 14.08.2015 showed that left ureter was damaged, due to post surgery, which in turn caused delayed excretion in left kidney. CT scan report dated 14.08.2015 showed "moderate left hydro-ureteronephrosis, Abrupt transition of callibare at Junction of mid and distal left ureter-Likely postsurgical stricture formation delayed excretion in left kidney". OP-1 stated that histopathology report of the

sample of uterus of the patient showed 'endometriosis'. OP-1 has filed Medical Literature to show that Endometriosis is defined as the presence of endometrial-like tissue outside the endometrial cavity and uterine musculature. It has been estimated to affect 10% to 20% of the general women but approaching 30% to 40% in infertile women. It is most commonly diagnosed in women of reproductive age, with peak age of 40 to 44 years. The main location of endometrial tissue is in the pelvis, exceptionally can be located in urinary tract. However, extra-pelvic endometrial tissues have been found in nodes and gastrointestinal tract. Relative frequencies of involvement of bladder, ureter and kidney are in the ratio of 40:5:1 respectively. In ureteral involvement, ratio of left to right is 4:1, more commonly involving the distal segment of the left ureter. Symptom depends on the site of endometrial implantation and severe disease can lead to pain and infertility due to extensive adhesions and distortion of anatomy. But clinical characteristics of ureteral endometriosis is typically marked by non-specific symptoms and as many as 50% of patients are often asymptomatic. So ureteral endometriosis can potentially lead to serious consequences such as urinary tract obstruction and finally silent loss of renal function. Risk of silent renal loss is reported to be as high as 25%-50%. Because of non-specific symptoms, insufficient preoperative evaluation, misinterpretation of imaging techniques or no-specific imaging findings, ureteral endometriosis is suspected before surgery in only 40% of the patients.

11. The complainant has not adduced any evidence of medical expert to prove that decision taken by OP-1 to prescribe the medicine i.e. antibiotic tab Ceftum-500- 1 tab BD (twice daily), for treatment of "left side mild hydronephrosis" was a wrong decision and the complication in her left ureter was not due to 'endometriosis', or such complication could not be noticed on 21.04.2015 and 27.04.2015 as by that time report of biopsy of uterus was not received. The counsel for the complainant has relied upon the judgment of Supreme Court in **V. Kishan Rao vs. Nikhil Super Speciality Hospial & Ors. 2010 (5) SCC 513** and submitted that it is not necessary to file expert evidence to prove the negligence of a doctor. Supreme Court in above case has not accepted its earlier judgment in **Martin F. D' Souza vs. Mohd. Ishfaq 2009 (3) SCC 1** in which the Supreme Court has directed that in every case of medical negligence without there being expert evidence it should not be entertained. Further in para-54 the Supreme Court observed as under: -

> *"The first duty of the expert is to explain the technical issues as clearly as possible so that it can be understood by a common man. The other function is to assist the Forum in deciding whether the acts or omissions of the medical practitioners or the hospital constitute negligence. In doing so, the expert can throw considerable light on the current state of knowledge in medical science at the time when the patient was treated."*

Supreme Court in **Jacob Mathew v. State of Punjab (2005) 6 SCC 1** and **M.A. Biviji Vs. Sunita and others, 2023 SCC OnLine SC 1363**, held that to infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional.

O R D E R

In view of the aforesaid discussion, negligence on the part of opposite party-1 in treatment of the complainant is not proved. The complaint is dismissed.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER