

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 296 OF 2012

(Against the Order dated 20/04/2012 in Complaint No. 2/2004 of the State Commission
Pondicherry)

1. M/S. CLINIC NALLAM & ANR.

.....Appellant(s)

1. A. HELEN VICTORIA & ANR.

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANTS : MR. SENTHIL JAGADEESHAN,
ADVOCATE
MR. SAJAL JAIN, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT NO.1 : MR. AKUR RAJ, ADVOCATE
MRS. NIKITA RAJ, ADVOCATE
MR. TUSHAR BHALLA, ADVOCATE
MR. SARTHAK DORA, ADVOCATE
FOR THE RESPONDENT NO.2 : NOT APPEARED

Dated : 10 November 2023

ORDER

AVM J. RAJENDRA, AVSM, VSM (RETD.), MEMBER

1. The Appellant filed the instant Appeal under section 19 of the Consumer Protection Act, 1986 (in short "the Act"), against the Order dated 20.04.2012 passed by the State Consumer Disputes Redressal Commission, Puducherry (hereinafter referred to as the "State Commission") in Consumer Complaint No. 2 of 2004, wherein the State Commission partly allowed the Complaint filed by the Complainant.

2. For the sake of Convenience, the parties in the present matter being referred to as position held in Consumer Complaint before the State Commission. Smt A. Helen Victoria is identified as the Complainant or the Patient (Respondent No. 1 herein). While M/s. Clinic Nallam, a private nursing home identified as Opposite Party-1 (Appellant No. 1 herein) Dr. V. Nallam is referred to as OP-2 (Appellant No. 2 herein) and Dr. Sreeramamurthy is identified as OP-3 (Respondent No. 2 herein).

3. The facts of the case as per the Complainant are that on 24.06.1991, the complainant underwent an abdominal hysterectomy at the OP-1 nursing home in Pondicherry, performed by Dr. V. Nallam (OP-2) and Asst. Surgeon Dr. Sreeramamurthy (OP-3). The histopathology report indicated 'Chronic Cervicitis'. Following the surgery, the Complainant experienced symptoms of giddiness and shivering, leading to her admission to the Intensive Care Unit on 17.07.1991. A provisional diagnosis suggested 'Urinary Tract Infection', for which the OPs provided treatment, and the complainant was discharged. OP-3 conducted dressings for the surgery wounds, sometimes even at the complainant's residence. On one occasion, OP-3 observed exposed unhealed wounds, treated the complainant, and prescribed medications 'proxylon' for stomach-ache and other medicines for her headache. Despite continued treatments, her health deteriorated and she could not do her day-to-day home activities and more so, she became dependent upon her family for everything. During 1994, she developed severe headaches and consulted Dr. Srinivasan, an ophthalmologist in Pondicherry, who prescribed power glasses that temporarily relieved her headache, while she continued taking proxylon, as advised by OP-3, for stomach pain. Her deteriorating health caused significant distress in the family and her husband suffered massive heart attack on 22.09.1995. Overwhelmed with worry, she also suffered chest pain on 23.09.1995, leading to her admission to ICU after suffering a mild heart attack.

4. During 1997, the Complainant sought medical help from Dr. Janarthanan, a renowned urologist in Pondicherry, due to traces of blood in her urine. Following his advice, she underwent a kidney X-ray, revealing a 'butterfly' shaped object. However, no appropriate guidance was provided by the doctor. In 1998, she experienced similar stomach problems, vomiting and coughing. OP-3 visited her at home and prescribed a ten-day course of injections. With no improvement even after two months, she consulted Dr. Dhiip Kumar Bhaliga at Govt General Hospital, Pondicherry, and later underwent homeopathic treatment based on his recommendation for one year. Despite these efforts, her condition did not improve. Between 2001 and 03.10.2003, she took treatments from Dr. TB Kasthuri, Dr. Ramesh, and Dr. Slvadasan, specialists in various fields, but her ailment persisted without improvement. Ultimately, on 03.10.2003, she consulted Dr. Mini Ravi, a Obstetrician and Gynecologist. After a thorough examination, Dr. Ravi diagnosed a poorly delineated object approximately 2.5 cm in size, superior to the vault, which needed to be removed through major abdominal surgery. Following this, Dr Kasthurl advised another scan at Govt General Hospital, Pondicherry, which was done on 04.10.2003. Despite the removal of the uterus on 24.06.1991, the scan revealed uterus was intact, confirming the presence of a foreign body. Seeing this, Dr. Kasthurl recommended another ultrasound scan on 11.11.2003 which revealed the foreign object, necessitating major surgery. Dr. Kasthurl referred the complainant to Dr. Dhiip Kumar Bhaliga, Chief Surgeon at Govt Hospital, for treatment. However, as Dr. Dhiip Kumar intended to operate on post-operative adhesions and not the

foreign body she felt unsafe and sought second opinion from a doctor at East Coast Hospital, Pondicherry, in November 2003. Following confirmation, she underwent major surgery, during which the foreign objects, identified as 'Nut and Bolt', which were left inside her abdomen by the Opposite Parties during the surgery on 24th June 1991, were removed. Thus, the OPs failed to provide adequate care for her, despite her repeated attempts to alert them to her symptoms. Such poor service should not have been given to any patient, especially one who had undergone open surgery. Unfortunately, they were negligent in their duties which the OPs acknowledged and as reparation, they offered to perform the necessary operation free of charge. They also they compensated the Complainant with a sum of Rs.50,000 for the immense pain and suffering she endured over the past 12 years due to their actions.

5. Being aggrieved she filed a Complaint before the State Commission for compensation of Rs.84,00,000 under Section 14(d) of the Act and at Rs.1,00,000 under Section 14(c) of the Act and costs of Rs.5,000. The Complainant also prayed for the interest at the rate of 24% p.a. on the total claim till the date of realization.

6. In their reply, the OPs contested that the complaint was filed after the period of limitation and therefore, was not maintainable. They denied the allegations, asserting that she had never been admitted to the clinic of OPs or undergone any operation. There are no records in their possession to ascertain the Complainant's claims, and it was her responsibility to prove her allegations. OPs claimed that no operation was performed by them on her. OP-3 was a Govt servant during the relevant period. Therefore, was not engaged in their hospital. OP-1 and OP-2 contested the credibility of other doctors mentioned by the Complainant, stating they are not parties to the complaint and, thus, irrelevant. Further, the OPs refuted the allegation of the removal of foreign materials (nut and bolt) by East Coast Hospital. In any case, the objects which ought to be stainless steel material for medical use were found to be rusted. Her claim is false, baseless and excessive.

7. The Ld. State Commission partly allowed the Complaint and directed as follows: -

“92. In the result, the complaint is partly allowed and partly dismissed. opposite parties are jointly and severally liable to pay to the complainant:

- a. ***A sum of Rs.6,00,000 towards cost of medical treatment incurred by the complainant;***
- b. ***A sum of Rs.72,000 towards engagement of household servant maid by the complainant for the household works for 12 years;***
- c. ***A sum of Rs.7,00,000 towards unbearable pain, loss of normal life, loss of care of the children, etc. because of negligence and deficiency in service on the part of opposite parties; and***
- d. ***A sum of Rs.5,000 towards costs.***

8. Being aggrieved by the impugned order, the Appellants/OP-1 & 2 has filed this present Appeal with the following prayer:

“To allow the revision petition and thereby set aside the order of the Hon'ble State Commission, Puducherry dated 20.04.2012 in Dispute No. 2 of 2004 and to grant any other relief or reliefs as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case and thereby render justice”.

9. The Appellants have mainly contended that the State Commission failed to note that the complaint was filed 13 years after the alleged surgery and thus is time-barred. The reasons cited are contrary to the precedent Dr. VN Shrikhande Vs. Mrs. Anita Sena Fernandes, IV (2010) CPJ 27 SC. The Complainant is silent about her condition from 1991-2002 contradicting her claims of continuous pain and suffering. While she received treatment from various doctors, no substantial evidence of her condition from 1991 to 2002 was evidenced. Crucial medical records of scan done on 04.10.2003 were not provided. Dr DK Baliga did not indicate presence of any foreign object in his report. Dr. Mini Ravi who is alleged to have conducted a surgery on her on 10.12.2003 was not examined. The Complainant was treated by multiple doctors during last 12 years. While contributory negligence is possible, none were joined as parties. While awarding Rs.6,00,000 as medical treatment costs, the complainant failed to produce evidence to prove the expenses. Award of Rs.72,000 towards salary of a maid was without evidence. The award of Rs.7,00,000 towards pain and loss of normal life was also baseless and unsubstantiated.

10. Upon notice on the memo of Appeal, the Respondent No. 1/ Complainant has not filed any reply. Dr Sreeramamurthy OP-3 did not appear for final hearing on 13.10.2023. However, he filed his reply denying all allegations and stated that he had no knowledge of the surgery in question. He submitted that he had not contested his defence by written statement. He has started in his reply before this Commission that the Complainant had consultation him and he gave medical prescriptions, which are not disputed. He insisted that he was not employed by OP-1 & 2 and was, in fact, on Government service at that time and produced his service record from 06.02.1980 to 30.09.2013. Further, during cross-examination on 09.02.2006, her son, Mr. Arokiadoss has stated that OP-3 was a Govt doctor in 1991.

11. In his arguments, the learned counsel for Appellants reiterated the grounds advanced in the Appeal and mainly argued on lapse of period of limitation and lack of evidence. As regards period of limitation, he asserted that the finding of the State Commission was incorrect. The Complainant was aware of the presence of the alleged foreign object in 1997. Thus, the limitation period started from that point and the same was ignored. As regards lack of evidence, he argued that the State Commission decided without proper consideration of evidence and highlighted that the son of the Complainant, who testified, had no personal knowledge of his mother's admission to the Appellants' clinic. He was 29 years old when he

deposed. So, he was about 15 years old when the alleged surgery was done, and he admitted that he had no knowledge. Therefore, Complainant failed to discharge her burden proof to prove surgery and negligence. He relied upon the following judgements: -

- (a) Limitation - “Haryana Urban Development Authority vs. B.K. Sood, (2006) 1 SCC 164”
- (b) Discovery Rule: “V. N. Shrikhande vs. Anita Sena Fernandes, (2011) 1 SCC 53”
- (c) Onus to prove in medical matters: - “ C.P. Sreekumar vs. S. Ramanujam, (2009) 7 SCC 130.
- (d) Presumption when party do not depose: - Vidyadhar vs. Manikrao, (1999) 3 SCC 573.
- (e) Man Kaur vs. Hartar Singh Sangha, (2010) 10 SCC 512.
- (f) Supriya Gupta vs. The Trustees of Breach Candy Hospital & Research Centre, 2005 SCC Online NCDRC 31.

12. The learned Counsel for the Complainant/ Respondent No. 1 reiterated the facts stated in the Complaint and evidence before the State Commission. He argued that the Appellants contention as regards the limitation period is untenable. In the year 1997, while suffering immense pain, the Respondent was not in position to suspect a foreign object, specifically ‘nuts and bolts’, that were negligently left behind by the Appellants during the surgery in 1991. Moreover, Dr. Janarthanam, who conducted the X-Ray, did not inform her of the foreign object left in her stomach, which clearly indicates that the presence of the foreign objects was not understood. The learned Counsel on being queried had stated that, on examination of the X-ray film, it was presumed to be the image of some keys that were accidentally not removed while taking the X-ray as none even remotely expected that a Nut and Bolt could be so negligently left behind. Thus, she had no scope to be aware of the cause of her suffering. He further stated that it was only when second scanning in the form of ultrasound scan was done, it was revealed. She immediately underwent surgery, and it was removed in November 2003. She forthwith filed a complaint. The Appellants did not lead any evidence in respect of the contentions before the State Commission and solely relied on statement of Appellant No. 2, which was disregarded as he failed to appear for further cross-examination and did not produce the required documents. He relied on the judgment of Hon'ble Supreme Court in ***Iswar Bhai C. Patel & Bachu Bhai Patel vs Harihar Behera & Anr*** on 16.03.1999 that “...if a party abstains from entering the witness box, it must give rise to an inference adverse against him.” He has also relied on the Judgement of Hon'ble Supreme Court in ***National Insurance Co. Ltd vs Hindustan Safety Glass Works Ltd*** on 7 April 2017, observing that “...18. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim.” As regards contention that the butterfly shaped object retrieved from the body of the Respondent was

rusted, while the same used by Appellants in surgeries were made of non-corrosive stainless steel, a study published in US Govt Library of Medicine revealed:

"The study was carried out during the period of September 2006-September 2008 at the Department of Oral and Maxillofacial Surgery Institute. The surface changes such as corrosion, surface roughness, microfractures, and tensile strength of 18 stainless steel miniplates and 18 stainless steel screws were evaluated, which had been used as rigid internal fixation in the management of maxillofacial fractures and orthognathic surgeries. After explaining the study protocol, written consent was obtained from patients. Symptomatic patients with complaints of the presence of infection, intraoral sinus or extraoral sinus opening, and dehiscence at the operated site were included, and medically compromised patients were excluded. The retrieved stainless plates and screws were examined with the aid of scanning electron microscope (SEM-JSM 840) in the Department of Metallurgy, Indian Institute of Science, Bangalore. Corrosion degradation was found in 12 of 18 stainless steel miniplates (that is 66.66%) and micro fractures and corrosion was observed in 18 stainless steel screws that were evaluated. With this study, retrieval of stainless miniplates and screws after their purpose of rigid fixation is served, was recommended."

13. We have examined the pleadings and associated documents placed on record and thoughtfully heard the detailed arguments advanced by the learned counsels for both the parties.

14. The main issue revolves around medical negligence and the alleged presence of foreign objects (nut and bolt) in the body of the complainant (Respondent No. 1) after a surgery performed by the Appellants (OP-1 & OP-2) in the year 1991. According to the Complainant, she underwent an abdominal hysterectomy at the OP-1 nursing home, conducted by Dr. V Nallam (OP-2) and Dr. Sreeramamurthy (OP-3).

15. Post the surgery, she experienced various health issues, leading to the discovery of foreign objects in her body in 2003. The primary question is whether the presence of these foreign objects is a result of the alleged negligence of the appellants during the surgery in 1991. The case is centered on medical negligence, the duty of care expected of medical professionals towards their patients, and the liability of the Appellants in the Complainant's health complications. The Appellants contested that the complaint is time-barred, as Complainant was aware of the foreign objects in her body in 1997, which should have prompted earlier legal action. Further substantial evidence linking the alleged surgery to their clinic does not exist. They do not have medical records or evidence to establish that the surgery occurred at their facility. They also contended scope for contributory negligence as she underwent medical treatment from various doctors over the years. The evidence, including the 2003 surgery, does not establish a clear connection between their actions and the complainant's condition.

16. It is established that the Complainant underwent surgery of "abdominal hysterectomy" on 24.06.1991 at the OP-1 nursing home and post-surgery, she experienced complications, including giddiness and shivering, leading to admission to the Intensive Care Unit and she

was treated for urinary tract infection. Thereafter, the complainant's health deteriorated, and she became dependent on her family for daily activities. Over the years, she suffered from chronic headaches, stomach-aches, and urinary tract infections. Various doctors were consulted, and treatments were attempted, but there was no improvement as the object was left unidentified. Ultimately, while severely suffering, on 03.10.2003 she consulted Dr. Mini Ravi and it was discovered that a foreign object was present and needed surgical removal. She was operated upon in November 2003 at East Coast Hospital, Pondicherry, and the surgery revealed that a "Nut and Bolt," were left inside her during the initial surgery in 1991 by the OPs. She alleged negligence by the OPs, leading to her prolonged suffering and complications and that the OPs offered her free operation and Rs.50,000. She suffered mental and physical pain coupled with medical expenses and other expenses for over 12 years due to the carelessness and negligence of the OPs.

17. As regards the objection raised by the Appellants that the complaint is time-barred and asserting that the Complainant was aware of the foreign objects in her body in 1997 and should have taken legal action earlier, it is crucial to note the circumstances. In 1997, the Complainant sought medical help from Dr. Janarthanan and underwent a kidney X-ray, which revealed a "butterfly-shaped object." However, the doctor did not provide appropriate guidance, leading to the Complainant being completely uninformed about the presence of foreign objects. Her suffering persisted until she consulted Dr. Mini Ravi in 2003, who informed her of the presence of a foreign object, necessitating surgical removal. On being so informed, she immediately underwent surgery and got it removed. Therefore, clearly, the existence of the foreign body (bolt and nut) inside the body of the Complainant was found and confirmed during October, 2003 and was removed on 10.12.2003. As the knowledge of the confirmation of foreign body counts for the computation of period of limitation, the complaint was filed within time, i.e., within two years from the date of knowledge of the confirmation of foreign body inside her body.

18. As regards the objection about lack of evidence, the Appellant pointed that the Complainant's son who testified had no personal knowledge of her admission to the Appellants' clinic. However, at that time, he was 15 years of age and testified as per his own understanding at that age. In any case, his evidence is of limited scope in the case, as the surgery, suffering of the Complainant and the removal of the foreign objects were conclusively established.

19. As regards the liability of Dr. Sreeramamurthy (OP-3), in his reply vehemently denied all allegations stating that he had no knowledge of the surgery in question. He asserted that he was not employed by OP-1 & 2 and was, in fact, in Govt service during that period. He produced service record from 06.02.1980 to 30.09.2013 in support. He admitted that the Complainant had consulted him and he gave medical prescriptions, which are not disputed. He admitted that he assisted the OP-2 to perform surgery on her on 24.06.1991. This makes it evident that he was present and assisted the OP-2 to perform the surgery, which has resulted in significant suffering to her. The documentary evidence produced by Complainant and medical prescriptions were not disputed. After the surgery on 24.06.1991, she again went to

OP-1 with the complaint of giddiness and shivering. She was admitted in ICU on 17.07.1991. After admission, she was found to be suffering from Urinary Tract Infection and was given treatment and discharged on the same day. This establishes that after the first surgery, she went to OP-1, OP-2 and OP-3 and they provided her the follow up treatment. However, she continued to suffer the said medical conditions for protracted time and had to visit several hospitals and doctors and was subjected to gross inconvenience and financial losses.

20. The Complainant produced documentary evidence for the first operation by OP-2 with the assistance of OP-3 and, after her discharge she was readmitted on 17.07.1991 in the same clinic for continued treatment and discharged on the same day. While the OPs contended that these documents are fabricated for the purpose of this case and disowned the same, however, they neither raised any objection in marking these documents on the side of the Complainant nor filed any document on their side pertaining to the period under dispute, to confront her claim. Thus, it is an established fact that the hysterectomy (uterus removal) was performed on 24.06.1991 in OP-1 clinic by OP-2. Thereafter, she suffered several medical complications as discussed above and finally when an ultrasound scanning was done, a foreign object i.e. bolt and nut were found in her stomach in November 2003. She immediately underwent surgery on 10.12.2003 and the 'Bolt and Nut' were removed from the abdomen of the Complainant. There is no evidence of any other surgery that the Complainant had undergone. Therefore, it is established by the Complainant that the foreign object viz. bolt and nut was left in the abdomen of the complainant negligently by OP-2 while performing the abdominal hysterectomy surgery on her on 24.06.1991. the OP-3 assisted the same and dressed the surgery wounds and prescribed medicines.

21. The complainant contacted several doctors and taken treatment externally after the first operation. She produced prescriptions of her treatment for about 12 years preceding the second operation on 10.12.2003. This indicates the unbearable pain, suffering and hardship she had undergone and the sleepless nights and inability she faced in performing her day-to-day routine work as house-wife to render valuable service to her husband and her children. In addition, she suffered financial loss during the relevant period. While the complainant did not produce any documents in respect of financial losses caused to her towards her treatment for 12 years and other losses due to erroneous and negligent operation performed by the OPs, she deserves to be appropriately compensated. Further, she was in distress and suffering due to the deficiency and negligence. The compensation for the same was appropriately determined by the learned State Commission.

22. On due consideration of the entire evidence and the foregoing discussions, we do not find any reason to interfere with the orders passed by the learned State Commission. The First Appeal No. 296/2012 is, therefore, dismissed.

23. There shall be no orders as to costs.

24. All the pending Applications, if any, stand disposed of accordingly. The Statutory amount deposited by the Appellants before this Commission or the learned State Commission be released to the Appellants along with interest accrued, if any, after due compliance of this Order.

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**SUDIP AHLUWALIA
PRESIDING MEMBER**

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**AVM J. RAJENDRA, AVSM VSM (Retd.)
MEMBER**