

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,
U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/769/2022
Date of Institution	:	30.8.2022
Date of Decision	:	21/5/2024

1. Ritu, D/O Late Mr Kuldip Rai, aged 52 years, R/o Flat no. 2020/2 HIG Flats, sector 47-c, Chandigarh, 160047.

....Complainant

VERSUS

1. Dr. Vijay Bansal, Ivy Hospital, Sector 71, Sahibzada Ajit Singh Nagar, Punjab 160071.
2. Ivy Health & Lifesciences Pvt. Ltd, Ivy Hospital, Sector 71, Sahibzada Ajit Singh Nagar, Punjab 160071 through its General Manager/Director/ Authorized Signatory.

Registered Office: - Administration Block, Ivy Hospital Sector-71, SAS Nagar Mohali, Punjab 160071, through its Chairman/Managing Director, Sh. Praveen Kumar Gupta.

....Opposite parties

CORAM :

PAWANJIT SINGH	PRESIDENT
SURJEET KAUR	MEMBER
SURESH KUMAR SARDANA	MEMBER

ARGUED BY : Ms. Neha Ahluwalia, Advocate for complainant.
: Sh. Munish Kapila, Advocate for OP No.1
: Sh. Inderdeep Singh, Advocate for OP No.2.

Per SURESH KUMAR SARDANA, Member

Briefly stated the complainant who had an overactive bladder with symptoms of urine urge owing to weak pelvic floor and weakening of muscle supporting bladder, on 6.10.2021 the complainant consulted in Ivy Hospital with OP No.1 with all her current and past medical history records and OP No.1 planned the complainant for hysteroscopy evaluation and the procedure was planned for 9.10.2021. On 09.10.2021, just 2 days after the initial consultation, the complainant was made to sign an authorization paper and a blank paper with the heading medication orders just 10 minutes prior to the evaluation, right at the entrance of the operation theatre. The complainant occupied in the fear of the tumor and anxious about the possible outcome of hysteroscopy evaluation, signed wherever she was asked to sign in a haste as there was no other alternative. Nothing was explained in detail to her, and she was forced to sign quickly as she had to be

moved in the operation theatre in 10 minutes. However there are no signatures on the consent for surgery. The complainant and her son had just given their signatures on a document which carried no written content whatsoever. Furthermore, signatures were taken on a blank medication orders page. It is pertinent to note that even a medication orders page has been converted into a consent page and it can be clearly seen that the format of the page itself is not of a consent form. Furthermore, even these fabricated and manipulated documents neither explained relevant potential repercussions that the patient would have faced on removal of key organs, nor do they say that the hysteroscopy evaluation was to not be discussed with the patient. The complainant was only aware that a hysteroscopy test would be done and was expecting the results to be discussed with her but when she opened her eyes all her organs- uterus, cervix, part of the vagina, lymph nodes, fallopian tubes and both the ovaries, were castrated by OP 1 as Total Laparoscopic Hysterectomy had been performed.¹⁷ The complainant was devastated and was under impression that the hysteroscopy might have revealed something so terrible about the tumour that her organs had to be taken out in such an emergency operation, following the hysteroscopy, which was being done only for the diagnostic purpose, at that stage. But it was after a few days that she got to know that the hysteroscopy test was inconclusive, as the source of tumour was unclear, and that due to the uterus being bulky the doctor himself could not exactly see and plan. That the doctor informed her son that he could not confirm anything about the presence and position of the lesion in the test but carried on with the surgery anyways after getting a few signatures from her son. The ovaries, fallopian tubes, lymph nodes all were removed along with the uterus, cervix and 4th of the vagina without prior consultation and consent of the complainant. The Ops ought to have waited till the appellant regained consciousness, discussed the result of the hysteroscopic examination and then gone ahead with removing her uterus and ovaries or suggested an alternate form of treatment, especially when the hysteroscopy evaluation was unclear and inconclusive. In the absence of an emergency and as the matter was still at the stage of diagnosis, the question of doing radical surgery did not arise. It is pertinent to note again that the procedure could have been done under local anaesthesia, but still general anaesthesia was administered. Further bilateral salpingo ooperectomy, (that is removal of ovaries and fallopian tubes) which are of significant importance to a female body was done when they were clearly healthy and normal. After the Hysterectomy, a biopsy was performed on the specimen/organs collected during the surgery. This report not only showed that the ovaries, fallopian tubes, and most of the uterus and lymph nodes were unremarkably healthy and devoid of cancer but also that there was very less cancer-free margin (1 mm) at the site of the cervix. Thus, the place at which the tumour was localized and concentrated was not effectively removed but all other areas that were cancer-free were removed. This negligence on OP1's part led her to undergo high- dose radiation therapy of 23 sittings of external radiations along with 2 sittings of internal radiation. After this also OP 1 asked her to go in for chemotherapy sittings and asked to deposit money again. Histopathology report dated 09.10.2021, the copy of which annexed above as ANNEXURE C-10. It is alleged that the remote possibility of the patient/complainant needing adjuvant radiotherapy even after the surgery was not even discussed by OP 1. Had the complainant known pre-hand, that even after the surgery, the possibility of undergoing radiotherapy/chemotherapy may arise, the complainant would have chosen radiotherapy as the desired primary treatment choice and not opted for surgery at all. Due to this negligence, the complainant had to undergo multiple sittings of radiotherapy which defeated the whole purpose of having the surgery and hugely increased her treatment expenses. This in turn also badly damaged her already weak pelvic floor and bladder. The complainant after discharge started having complications and prolapse symptoms from the very onset and was communicating this to OP 1 through WhatsApp chats. But OP 1 stopped communicating and replying to her plight. The patient had been suffering from unbearable pressure and pain throughout her lower abdomen and in her vagina. Her state was such that even sitting or lying down became unbearable for her. Out of sheer helplessness, the patient tried every possible means to reach out to the doctor, explaining her travesty in great detail but got no response at all from the doctor. The complainant upon receiving unsatisfactory medical care from Ivy Hospital, went to PGIMER, Chandigarh, where she was diagnosed with acute grade 2 bladder prolapse along with other abdominal complications. The surgery had created a vacuum which in turn led to sagging of adjacent organs like the rectum, intestines and bladder exerting big pressure and causing inflammation on vagina. The doctors at PGIMER even admitted while talking to the patient that, they had not seen such a mismanaged case screaming of neglect and unprofessionalism. The complainant further went to Fortis Hospital, Mohali due to unbearable daily pain and suffering and was diagnosed for cystocele, rectocele, mental damage and eye related problems there, all on account of the surgery performed by OP 1. All doctors from Fortis Mohali confirmed the findings of PGIMER Chandigarh and recommended prolapse repair surgeries and other lifelong management measures. The complainant is brutally traumatized and disabled right from day one of surgery leaving no stone unturned to rectify the damages, the damages have been to an extent they are not repairable. The complainant is disabled to do her office or work at home. She is

literally dragging herself to work as she has huge loans to the tune of Rs. 59 lakhs to repay, has six years till her retirement. It is fairly evident that the complainant was making all out efforts to reach out to OP 1 as she was facing the symptoms relating to all the current bodily damages and post-surgery repercussions to various parts of the complainant. Had OP 1 replied to her messages in time or paid attention to her problems and symptoms, the present situation of organ prolapse leading to unbearable physical pain and abdominal pressure & lack of mobility could have been prevented and such blatant neglect by OP 1 was just to avoid coming under the line of fire as he was well aware about his mismanagement, complete failure, deficiency of service and utter negligence towards his patient. Alleging the aforesaid act of Opposite Parties deficiency in service and unfair trade practice on their part, this complaint has been filed.

2. The Opposite Parties NO.1 in its reply stated that the complainant reported to Opposite Party No.2 Hospital in the morning of 09.10.2021 for admission. Complainant and her son who was attending to her at that time were explained about the procedure in detail. It was informed to the complainant that first diagnostic hysteroscopy would be done and based upon hysteroscopy finding the type of procedure will be decided. It was clearly explained that in case cervix was normal then complainant will require hysterectomy with bilateral salpingo- oophorectomy with bilateral pelvic lymph node dissection with/without lower para-aortic lymph node dissection. However, it was clearly explained that in case, there was involvement of the cervix then additionally complainant will require Wertheim Hysterectomy. It was clearly explained to the complainant in presence of her son that after surgery she may have chances of urinary bladder problems and she may require radiotherapy or chemotherapy depending on Final HPE report. The hand written consent, where the risks & complications were explained to complainant in the presence of her son and duly signed by both complainant and her son as well as by Opposite Party No. 1 as well as printed consent form have been annexed by the complainant herself along with the complaint at page No.36-37 and 40 of the paper book. After due consents and clearances the complainant was taken up in the operation theatre for hysteroscopy and definitive surgery on 09.10.2021 at 3:05 PM as would be evident from the perusal of hospital record which is annexed as Annexure OP-1/5. The perusal of the operation theatre notes clearly reveal that on hysteroscopy, exocervix and endocervical canal looked normal and the lobulated lesion was arising from the anterior wall of lower uterine segment and projecting into the endocervical canal. Based upon these hysteroscopy findings Opposite Party No.1 decided to proceed ahead with the surgery i.e. total laparoscopic hysterectomy with bilateral salpingo- oophorectomy with bilateral pelvic lymph node dissection and omental sampling. The surgery was performed by Opposite Party No.1 along with gynecologist-Dr. Sunaina Bansal who is MD (Gynecology & Obstetrics) from Gujarat Cancer & Research Institute Ahmedabad as per standard guidelines. The removed uterus along with ovaries and fallopian tubes and lymph nodes and omentum were sent for Histopathological examination in separate containers. post-surgery complainant had uneventful recovery and she was discharged from the hospital on 15.10.2021 with medication as advised in the discharge summary. Complainant was advised follow up after 5 days. post-discharge biopsy samples obtained during hysteroscopy and laparoscopic surgery were duly reported on 20.10.2021. The pathologist after examining the tissue sample reported that complainant had all margins free of tumor and that she had Adenocarcinoma of cervix and lower uterine segment with uninvolved lymph nodes with differential diagnosis 1) Endometrioid Adenocarcinoma ii) Mesonephric Adenocarcinoma. In view of above findings the Pathologist advised IHC as the same is essential for definite tumor categorization. **The above findings were discussed in the Tumor Board Meeting comprising of Radiation Oncologist, Oncologist, Surgical Oncologist, Medical Pathologist and Gynecologist at IVY Hospital who advised adjuvant chemo- radiation in the complainant's case. However, when the same was discussed with complainant she refused chemotherapy. Thus, she was referred to Medical Oncologist& Radiation Oncologist for deciding the future course of treatment. Thereafter, complainant underwent radiotherapy both at IVY and Max Hospital, Mohali. So far as treatment by the Radiation Oncologist is concerned the said treatment was rendered to the complainant independently by the concerned specialist and Opposite Party No.1 had no role in the same. From 15.11.2021 to 07.01.2022 complainant was under the primary care of the radiation oncologist and any symptoms arising out of radiation therapy had to be addressed by the radiation oncologist. Despite being under the care and treatment of the Radiation Oncologist and Opposite Party No.1 not having been involved in the treatment of the Complainant at that stage, yet Opposite Party No.1 always assured her and went out of the way to help her in whatever way possible when she called him up or messaged him. However, many a times the complaints were not in respect of medical treatment and complainant was demanding discounts etc. Opposite**

Party No.1 obliged her wherever possible. During post-operative period the complainant underwent ultrasound abdomen on 14.10.2021, which was absolutely normal. Also during the course of radiation therapy the complainant underwent ultrasound whole abdomen and transvaginal ultrasound on dated 27.11.2021, which reported a normal ultrasound study, there was no collection, mass, tenderness in pelvic area or any other complications related to her surgery. Moreover, complainant was raising queries in respect of vague and non-specific symptoms, which are commonly associated with radio therapy and are seen in anxious patient like the complainant, who was interpreting everyday bodily symptoms as indicating serious disease. Despite reassurances from Opposite Party No.1, complainant was seeking other medical consultations.. At times, Opposite Party No. 1 could not have addressed her issues on phone or WhatsApp so he requested complainant to visit him in his OPD so that he could understand her complaints and assist her accordingly. All this was done gratuitously as complainant had been patient of Opposite Party No.1. However complainant wanted Opposite Party No.1 to be available round the clock and take her calls and render assistance to her and reassure her whenever she desired irrespective of the fact whether Opposite Party No. 1 was in the operation theatre or attending to his patients. In his busy schedule of conducting surgeries and treating his patient Opposite Party No.1, could not respond to all the messages sent by complainant on his WhatsApp or take all her calls. This extremely peeved complainant and she sent a message dated 24.01.2022 leveling reckless allegations against Opposite Party No.1. Thereafter, complainant has Instituted the present complaint before this Hon'ble Commission. Thus, the present complaint is nothing but an outburst wherein she has leveled unsubstantiated allegations to berate Opposite Party No. 1. Hence there is no deficiency on the part of the answering OP and the complaint is liable to be dismissed.

3. OP No.2 in its reply while admitting the factual matrix of the case has taken similar stand as has been taken by OP No.1. However, it is stated that the complainant has miserably failed to prove negligence on the part of the answering OP. It is averred that the answering OP has engaged the best qualified doctors and other staff for providing the best treatment and there is no challenge to the qualification and competence of the concerned doctors. The answering OP cannot be held liable if a particular procedure do not produce desired results despite taking all the precautions and care as per established medical norms and procedure. Denying any deficiency on its part all other allegations made in the complaint has been denied being wrong.
4. Rejoinder was filed and averments made in the consumer complaint were reiterated.
5. Contesting parties led evidence by way of affidavits and documents.
6. We have heard the learned counsel for the contesting parties and gone through the record of the case.
7. The main grievance of the complainant is that she was operated upon by the OPs doctors without any consent and moreover, she was not given alternative option and all this increased her treatment expenses. Moreover, as per her she was recommended by the doctors at Fortis Hospital for prolapse repair surgeries and other life long management measurements. She further have grievance that due to surgery done by the OPs or its doctors she is disabled to do her office or work at home.
8. As regards to the allegations of performing surgery without consent we have perused documents at page 36 and 37 of the complaint Annexure C-8, which is consent for surgery/major procedure, duly signed by the patient as well as her son. The said consent contains the details of surgery/procedure to be carried out, complications/major risks involved. Hence, we are of the view that the consent has been duly obtained by the OPs before the said surgery/procedure having been performed.
9. Furthermore, the complainant has relied on consultations with various other practitioners of Fortis hospital but the same are not supported by any affidavits of any of the consultants/practitioner doctors. Hence, we are of the view that much reliance cannot be placed on these consultations as nowhere it has been brought out that prolapsed repair surgeries as recommended by the doctors of Fortis Hospital are directly related consequences of the surgeries performed by the OPs doctors.
10. Needless to mention here that the OPs have attempted to treat their patient to the best of their ability, which was being done in the present case as well. Therefore, we do not find that OP Hospital and its well qualified and experienced doctors guilty of any negligence, much less medical negligence.
11. We are supported by the ratio of law laid down by the Hon'ble Supreme Court of India in Dr. Harish Kumar Khurana Vs. Joginder Singh & Ors., Civil Appeal No. 7380 of 2009 decided on 07.09.2021. Relevant part of the said order is reproduced hereunder:-

“...To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of

res ipsa loquitur could be made applicable and not based on perception. In the instant case, apart from the allegations made by the claimants before the NCDRC both in the complaint and in the affidavit filed in the proceedings, there is no other medical evidence tendered by the complainant to indicate negligence on the part of the doctors who, on their own behalf had explained their position relating to the medical process in their affidavit to explain there was no negligence”

14. Here we may also like to refer case titled as Dr.Laxman Balkrishna Joshi vs. Dr.Trimbark Babu Godbole and Anr., AIR 1969 SC 128 and A.S.Mittal v. State of U.P., AIR 1989 SC 1570, wherein, it was laid down by the Hon’ble Supreme Court that when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor. In the aforementioned case, the apex court interalia observed that negligence has many manifestations – it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence, or negligence per se. Black's Law Dictionary defines negligence per se as “conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of statute or valid Municipal ordinance or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.” Thus, it has been made clear by the Hon’ble Supreme Court of India that a doctor owes to his patient certain duties of care in deciding whether to undertake the case and duty of care in the administration of that treatment and any breach thereof may give a cause of action for negligence and the patient may on that basis recover damages from his doctor. In the present case, the OPs did not fail in their duties to take due care of the Complainant.
15. In these set of circumstances, it can safely be concluded that there has been no deficiency in service on the part of OPs and the whole gamut of facts and circumstances leans towards the side of the Ops. The case is lame of strength and therefore, liable to be dismissed.
16. Taking into consideration all the facts and circumstances of the case, we have no hesitation to hold that the Complainant has failed to prove that there has been any deficiency in service on the part of the OPs. As such, the Complaint is devoid of any merit and the same is hereby dismissed, leaving the parties to bear their own costs.
12. Pending miscellaneous application(s), if any, also stands disposed off.
13. Certified copies of this order be sent to the parties free of charge. The file be consigned.

[Pawanjit Singh]
President

[Surjeet Kaur]
Member

21/5/2024

[Suresh Kumar Sardana]
Member

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