

**DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION-V, NORTH-WEST GOVT. OF
NCT OF DELHI
CSC-BLOCK-C, POCKET-C, SHALIMAR BAGH, DELHI-110088.**

**Complaint Case No. CC/244/2017
(Date of Filing : 24 Mar 2017)**

1. LAXMI

B-704, JAHANGIRPURI, DELHI-110033

.....Complainant(s)

Versus

1. ESI HOSPITAL AND ORS.

MEDICAL SUPERINTENDENT, ROHINI, SEC-15, NEW
DELHI

2. DIRECTORATE OF FAMILY WELFARE (GOVT OF NCT
OF DELHI)

B&C-WING , 7TH LEVEL, VIKAS BHAWAN-II, NEAR
METCALFE HOUSE, CIVIL LINES, DELHI-110054

3. ICICI LOMBORD GENERAL INSURANCE COMPANY

BIRLA TOWER, 5TH FLOOR, 25, BARAKHAMBA
ROAD, NEW DELHI-110001

.....Opp.Party(s)

BEFORE:

NIPUR CHANDNA PRESIDING MEMBER

PRESENT:

Dated : 25 Nov 2024

**Final Order / Judgement
ORDER**

25.11.2024

MS. NIPUR CHANDNA, MEMBER

1. The factual matrix of the present case is that present complaint falls under definition of section 2(1)(c)(iii) of Consumer Protection Act, 1986 (hereinafter referred to as Act) as the complainant went under Tubectomy on 02.01.2014 against Insurance No.20012963394 at Employee State Insurance Hospital (ESIH) at Sector-15, Rohini, Delhi-110085. The said tubectomy was unsuccessful/failed. Therefore, the ESI, Rohini (OP1, 2 and 3) are deficient in their services.
2. It is stated that as per Section-I Column (c) and (d) of Manual for Family Planning Insurance Scheme, Rs.30,000/- per case to be paid towards failure of sterilization (including first instance of conception after sterilization) and Rs.25,000/- towards expenses for treatment of medical complication due to sterilization operation (within 60 days of operation). It is stated that this amount is apart from providing cash compensation to the acceptor of sterilization for loss of wages, transportation, diet, drugs, dressing etc. out of the funds released to States/UTs under this scheme, some States/UTs were apportioning some amount for creating a miscellaneous purpose fund. It is stated that the amount of

compensation and cost of treatment has not been paid by the concerned department even after lot of persuasion.

3. It is stated that complainant underwent Tubectomy on 02.01.2014 against insurance no.20012963394 at Employee State Insurance Hospital (ESIH) at Sector-15, Rohini, Delhi-110085. Copy of discharge slip with sterilization certificate filed on record. It is further stated that since earlier tubectomy was unsuccessful so complainant had to undergo same process of tubectomy on 16.05.2014 in same hospital. It is further stated that complainant was discharged on 19.05.2014. It is stated that complainant have to undergo tubectomy twice due to hospital negligence. It is further stated complainant suffered a lot of difficulties during that period and since then complainant is not keeping good health.
4. It is stated that complainant husband is working in private security agency and having very meager resources to take care complainant family. Since, complainant health deteriorated after tubectomy, complainant husband has to take leave time to time from his job which also reduced the income of the family and he has to manage extra expenditure from modest financial condition.
5. It is stated that complainant husband brought the above fact to the notice of ESI Hospital (OP1) vide letter dated 10th September, 2015. It is further stated that in response to my representation, hospital authorities informed vide note dated 28.09.2015 that compensation of failure cases can be given only to those cases which are performed after accreditation of the Hospital (June, 2015). It is further stated that Directorate of Family Planning OP2 has declined to provide compensation to sterilization failure cases prior to accreditation and empanelment of the hospital. As per information received from said OP1, the Hospital received the accreditation somewhere in June, 2015 whereas the tubectomy process was performed first on 01st January, 2014 and again on 16th May, 2015. It is stated that it was also informed by said Hospital that Directorate, Family Planning (OP3) has declined to provide compensation to failure cases prior to accreditation and empanelment of hospital.
6. It is stated that in accordance with DO letter dated 10th January, 2008 issued by Ministry of Health and Family Welfare with regard to renewal of Family Planning Insurance Scheme w.e.f. 1st January, 2008 (attached with Manual) complainant is entitled to be indemnified however the hospital took defense contrary to letter and spirit of that letter. It is stated that complainant had not been explained about the fact of non-receipt of accreditation of hospital at any stage prior to conducting the tubectomy process. Even more, complainant was not made aware that in case of failure complainant would not get any insurance claim in this respect. It is further stated that this negligence on the part of the hospital kept complainant in dark by not revealing this relevant fact. It is further stated that it is surprising that ESI hospital was allowed to conduct the said process of tubectomy/vasectomy when they had not received the permission/accreditation at that time. It is further stated that hospital authorities by conducting tubectomy procedure without receiving permission/accreditation is glaring example of putting the life of general public on peril. It is stated that this was sheer lapse on the part of hospital for which hapless individual is bearing the loss. It is stated that OP1, 2 and 3 department kept complainant running from pillar to post without any sufficient reason.
7. It is stated that complainant sought information under Right to Information Act, 2005 vide registered post letter no. R0447756527IN dated 04.12.2015 from Directorate of Family Welfare, Vikas Bhawan Delhi however did not receive any response. It is further stated that another letter dated 04.02.2016 was written to Mr. Om Prakash, Administrative Officer (Establishment Branch), Directorate of Family Welfare seeking confirmation of received of complainant application under RTI Act. It is stated that in response to letter dated

- 04.03.2016 PIO informed that letter had been received and action on the same has been initiated furthermore information desired by the applicant shall be supplied.
8. It is stated that when no response was received after elapse of more than one month, undersigned appealed to First Appellate Authority (Director, Family Welfare, B7C Wing, 7th Level, Vikas Bhawan-II, Civil Lines, Delhi-110054 constituted under Right to Information Act vide letter dated 27th April, 2016. It is stated that in response to complainant application the complainant received communication dated 12th May, 2016 with email annexure dated 2nd May, 2016 written by Medical Superintendent, Rohini, Delhi wherein it was mentioned that initiation of the process of compensation of sterilization failure of Laxmi w/o Shambhu Kumar Chaudhary as per GOI guidelines has already been done.
 9. It is stated that complainant also wrote a letter dated 06.06.2016 to OP1 to speed up the disbursement of compensation however same fell to deaf ears. In view of facts and circumstances as referred hereinabove clearly shows that the concerned department is unsympathetic to the difficulties of the complainant and trying to evade their liabilities. Thereafter, complainant made several personal visits to office of Medical Superintendent, Rohini, Delhi in this regard however no action was taken by the concerned department with regard to release of compensation on account of failure of sterilization process.
 10. Complainant is seeking direction against OPs to pay compensation amount of Rs.30,000/- with interest for failed tubectomy from January, 2014 onwards till date as per section I, Column (d) of Manual for Family Planning Insurance Scheme as revised w.e.f. 1st January, 2008., to release compensation of Rs.25,000/- with interest for cost of treatment up to 60 days arising out of complication from the date of discharge, to pay compensation of Rs.72,000/- towards loss of health (i.e. amount incurred on food and other things during the period of more than 3 years) (Calculated Rs.2,000/- per month for 3 years) as complainant have to underwent two tubectomy one after another even still after passing of 2 years, complainant is not keeping well, to pay Rs.50,000/- towards loss of earning as her husband who is sole earning manner, visited the offices of OPs and this caused loss of duty hours and amount spent on sending communication, to pay litigation cost of Rs.5000/- and any other order which deems fit and proper.
 11. OP1 filed detailed WS. It is stated that the present complaint does not fall under the definition of section 2(1)(c)(iii) of the Consumer Protection Act, 1986. It is further stated that OP1 has been delivering Family Planning services since 1999 under the ages of Family Planning unit ESI Hospital, Basaidarapur, prior to decentralization. It is further stated that the doctors who perform lap sterilization are experts and have necessary post graduate qualifications and experience in this filed. However incidence of failure of laparoscopic sterilization is reported in 7 out of 1000 cases in 3 years in Gynaecology due to recanalization. Hence OP1 cannot be considered as deficient in their services.
 12. It is stated that it is a Govt. of India Scheme under the Ministry of Health and Family Welfare, 2008 that as per Section 1 Column (c) of Manual for Family Planning Insurance Scheme the amount of Rs.30,000/- per case to be paid towards failure of sterilization. It is further stated that the Family Planning services of the ESI Hospital Rohini was covered under the ESI Hospital Basaidarapur, which was accredited, as all family funds (incentive money, bed maintenance charges, laprocaters, sterilization certificates, boyles apparatus) were being provided from Delhi Govt. It is stated that after decentralization in April 2013, ESI Hospital Rohini had applied for empanelment. It is further stated that the case of complainant was in the window period of decentralization to accreditation and the matter was referred to F.P Directorate DMD and also to Director Family Welfare, Vikas Bhawan,

Delhi. It is stated that there is no change in the situation as same doctors have provided services with same facilities & Delhi Govt. can very well grant benefit of the scheme to the patient in its discretion.

13. It is stated that the complainant underwent MTPE Lap Ligation on 02.01.2014 and the same had failed. Failure of lap ligation is a well known complication. It is further stated that the risk of failure of surgery had already explained to every patient and also to the complainant by the OP1 i.e. ESI Hospital, Rohini. It is stated that there was no negligence on part of the OP1 as all precautions were taken and surgery was performed by competent doctors and the complainant was given full pre-operation care and was discharged on 4th post-operation day i.e. on 19.05.2014. It is further stated that the case of complainant lies in the window period between decentralization and the OP1 do not have any specific guidelines from the centre regarding payment under indemnity scheme.
14. It is stated that OP1 is functioning since Oct 1999 and family planning services are being provided since then. It is further stated that patients were getting incentive money and sterilization certificates from funds provided by Delhi Government through F.P unit Basaidarapur. It is further stated that a letter bearing no. F3(1) RCH/FP/QA/DHS-W-E.11-12/1677 dated 11.03.2013 issued by the Mission Director, District Management Unit, wherein it was informed that due to decentralization, empanelment of MO & specialist for sterilization services will be done by CDMO office of respective zones. It is stated that since then OP1 stopped getting funds and sterilization certificates from ESI Hospital Baisaidipur. It is further stated that immediately after this OP1 applied for accreditation of the centre and empanelment of doctors, who were legally competent to perform laproscopic ligation. It is stated that the Family Welfare initiative sponsored by Govt. of India. It is further stated that there is no such provision in ESI Scheme. It is stated that present complaint may be dismissed.
15. Complainant filed rejoinder to the WS of OP1 and denied all the allegations made therein and reiterated contents of complaint.
16. As per record OP2 after service failed to file WS and also not appeared and vide order dated 10.10.2017 proceeded ex parte.
17. OP3 filed WS and taken preliminary objections that the present complaint is liable to be dismissed for being immature in nature. It is further stated that the claim pertaining to the policy is not informed to the answering OP3 till today, hence no liability in the part of answering OP arise.
18. It is stated that the complainant has not approached this Hon'ble Forum with clean hands and has concealed the material facts from the Hon'ble Forum to cause wrongful gain to himself and wrongful loss to the OP1. On this very ground the complaint is liable to be dismissed. It is further stated that there is no deficiency of service as alleged against the OP1 within the meaning of Section 2(g) of the Consumer Protection Act. On this very ground the complaint is liable to be dismissed. It is stated that the present matter is liable to be dismissed as the complainant deliberately tried to mislead the Hon'ble Forum by hiding the fact that the policy, the Operation date is 02.01.2014 and failure detection date is 16.05.2014. It is further stated that the complainant has not renew the policy after 31st December, 2008, hence the answering OP is not liable to pay any sort of compensation.
19. It is stated that the present complaint filed by the complainant is frivolous and vexatious, therefore, liable to be dismissed under section 26 of the Consumer Protection Act 1986. It is further stated that the complaint deserves to be dismissed on the sole ground of the admission of the complainant that the Tubectomy process was performed first on 1st January, 2014 and again on 16th May, 2015, However the Hospital received the accreditation and empanelment of the Hospital somewhere in June 2015. Hence, it is clear

that the complainant has not underwent the said treatment with the listed hospital, and there is no deficiency in service of answering OP3.

20. On merit all the allegations made in the complaint are denied by OP3 and reiterated contents of preliminary objections. It is stated that the policy was till 31.12.2008 and complainant did not informed the OP3 of the said operation, therefore, present claim is premature and also complainant was undergone the treatment with the hospital which was not listed or accredited at that time, therefore, present complaint is liable to be dismissed.
21. Complainant filed rejoinder to the WS of OP3 and denied all the allegations made therein and reiterated contents of complaint.
22. Complainant filed evidence by way of her affidavit and reiterated contents of complaint. Complainant relied on copy of manual of Family Planning Insurance Scheme Ex.BC1/1, copy of discharge slip with sterilization certificate Ex.BC1/2, documents related to discharge with sterilization certificate Ex.BC1/3, copy of communication dated 10.09.2015 Ex.BC1/4, copy of information received from hospital vide note dated 28.09.2015 Ex.BC1/5, copy of letter Ex.BC1/6, copy of letter Ex.BC1/7, copy of letter Ex.BC1/8, copy of letter Ex.BC1/9, copies of communication and email Ex.BC1/10 and copy of letter dated 06.06.2016 Ex.BC1/11.
23. OP1 filed evidence by way of affidavit of Dr. S.K Raju, Med. Superintendent and reiterated contents of WS.
24. OP3 filed evidence by way of affidavit of Mr. Krashanu Pundir, Legal Manager and reiterated contents of WS. OP3 relied on GPA Ex.RW1/A and copy of removal of Family Planning Insurance Scheme Ex.RW1/B.
25. Written arguments filed by complainant as well as by OP1. As per record no written arguments filed OP3.
26. We have heard Sh. D.K Sinha counsel for complainant and Sh. Lakshay Jain counsel for OP3. We have gone through the written arguments filed by OP1. We have also gone through the record.
27. Perusal of the record shows that the complainant is seeking the relief against all the OPs with the prayer to release the compensation amount of Rs. 30,000/- for failure of tubectomy as per section 1 column (d) of manual for family planning insurance scheme as revised w.e.f. 01.01.2008. Beside this she has also claimed compensation on account of loss of health, loss of earning, mental pain and agony.
28. Admittedly, OP3 issued the insurance policy for the year 2008 and as the policy is a contract of one year and the same was not renewed it got terminated in the year 2008 .The present claim pertains to the year 2014, and the complainant has failed to place on record any documentary evidence that in the year 2014 complainant have effective valid policy and she had lodged any claim in respect to the same. Hence, we are of the considered opinion that the claim of the complainant in respect to OP3 is not admissible and no case of deficiency as alleged can be made out against OP3. We therefore discharged OP3.
29. The complainant has undergone tubectomy in OP1 hospital on 02.01.2014, the same was not successful as such she was again admitted to OP1 hospital on 16.05.2014 and was discharged on 19.05.2014 but the second surgery also failed and as such she approached OP1 for reimbursement as per the manual for family planning insurance scheme 2008 but the same was denied. Complainant has also placed on record copy of the manual which clearly speaks that the manual pertains to the year 2008 and she failed to place on record any documentary evidence that still the manual for family planning insurance scheme 2008 is applicable in the year 2014 when she undergone sterilization. The complainant alleged in her complaint that she received the letter from the OP informing her that her reimburse claim has already been released but failed to place on record any documentary evidence in

respect to the same, rather the complainant herself has placed on record inter department email dated 03.03.2016 vide which the OP1 denied the payment of compensation for sterilization failure.

30. Before advertng to the disposal of the present complaint let us peruse the citation of Hon'ble Apex Court which enlightened our path while deciding the issue in question.
31. It is well settled that the methods of sterilization / tubectomy are not 100% safe and secure. The Hon'ble Apex Court in the case of State of Punjab Vs. Shiv Ram and others; IV (2005) CPJ 14 (SC), has held that unless it is proved by the cogent evidence on record that the operating doctor was negligent in the performance of the job assigned to him / her, no case of medical negligence can be sustained merely on the ground of failure of sterilization operation. It was further held that merely because woman having undergone sterilization operation became pregnant and delivered child, operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or child. It is worth mentioning here that no medical expert evidence has been produced on record to show that the sterilization operation of the complainant was not carried out as per the prescribed method. The District Forum has nowhere in its impugned order recorded any finding on the point of medical negligence on the part of the operating doctor and in the absence of such a finding, the District Forum was not at all justified in allowing the consumer complaint.
32. The Hon'ble National Commission in the case of Kamla Kesharwani Vs. Superintendent, Shyamshah Medical College and Gandhi Memorial Hospital and others; III (2009) CPJ 17 (NC), has held that there is no guarantee that after tubectomy operation, the child birth will not take place. It was also held that the failure of tubectomy operation has been explained in medical texts. It was also held that, "the methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. Inspite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. Section 3(2) Explanation II provides that if the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the [Medical Termination of Pregnancy Act, 1971](#)".
33. The Hon'ble National Commission in its decision dated 17.08.2010 rendered in First Appeal No. 291 of 2007; Dr. S.K. Gupta and others Vs. Sh. Rajbir Singh, under the similar circumstances, has held that the case of medical negligence against the operating surgeon is not made out and the complainant was not held entitled to any relief and the order passed by the District Forum, allowing the consumer complaint, was set aside.
34. We may also advantageously refer to a decision dated 03.12.2008 of the Hon'ble National Commission given in the case of The Chief Executive Officer and others Vs. Sagunabai Navalsing Chavan; 2011 (1) CCC 286 (NS). The facts of the reported case were that the complainant underwent tubectomy operation and even after the tubectomy operation, she became pregnant and delivered a female child. The District Forum awarded compensation of Rs. 500/- per month towards the expenses of the child upto the age of 18 years and directed the opposite party Nos. 1 to 4 to pay jointly and severally sum of Rs. 1,15,000/- as compensation along with cost of Rs. 5,000/- to the complainant. The Hon'ble National Commission held that the tubectomy operation was performed free of cost and the complainant got incentive from the government for undergoing operation. It was also held that once the complainant has conceived, she could have approached same hospital for undergoing MTP, which she has not done. As per the Medical Literature, there are chances of failure of sterilization and recanalisation could take place due to natural causes. The

order of the Foras below was set aside and the complaint was dismissed. In the instant case also, the sterilization / tubectomy operation of the complainant was done at the government hospital free of cost.

35. Since there was no cogent and reliable evidence on record to prove medical negligence on the part of the treating surgeon in conducting the sterilization operation, we are of the considered view that the complainant failed to establish the case of deficiency in services against the OPs. We therefore find no merits in the present complaint same is therefore dismissed being devoid of merits.
36. File be consigned to record room.
37. Copy of the order be given to the parties free of cost as per order dated 04.04.2022 of Hon'ble State Commission after receiving an application from the parties in the registry. The orders be uploaded on www.confonet.nic.in.

Announced in open Commission on **25.11.2024.**

SANJAY KUMAR
PRESIDENT

NIPUR CHANDNA
MEMBER

RAJESH
MEMBER

[NIPUR CHANDNA]
PRESIDING MEMBER