

**DISTRICT CONSUMER DISPUTES REDRESSAL FORUM
KOLKATA UNIT - II (CENTRAL)
8-B, NELLIE SENGUPTA SARANI, 7TH FLOOR,
KOLKATA-700087.**

**Complaint Case No. CC/396/2018
(Date of Filing : 04 Sep 2018)**

1. Anna Louise Correia
28 Marquis Street, Flat 1E, Marquis Court, Park Street,
P.S. New Market, Kolkata-700016.Complainant(s)

Versus

1. VLCC Health Care Ltd.
Regd. office M-14, Greater Kailash, Part II, Commercial
Complex, New Delhi, Pin-110048.
2. VLCC Health Care Ltd.
Corp. Office HSIIDC, Maruti Industrial Area, 64 Sector
18, Gurgaon, Pin-122015.
3. VLCC Health Care Ltd.
33, Shakespeare Sarani, Opposite to Rani Birla College,
P.S. Park Street, Kolkata-700017.Opp.Party(s)

BEFORE:

**HON'BLE MR. Swapan Kumar Mahanty PRESIDENT
HON'BLE MRS. Sahana Ahmed Basu MEMBER
HON'BLE MR. Ashoke Kumar Ganguly MEMBER**

For the Mousomee Shome, Advocate

Complainant:

For the Opp.

Party:

Dated : 14 Jan 2020

Final Order / Judgement

For the complainant - Miss Mousomee Shome, Advocate

For the OPs - Mr. Debosis Mitra, Advocate

FINAL ORDER/JUDGEMENT

SHRI SWAPAN KUMAR MAHANTY, PRESIDENT

This is an application u/s.12 of the C.P. Act, 1986.

The complainant being influenced with the attractive package and various advertisements, interviews on Social Medias as well as daily newspapers approached the OP-3 for taking their services for reduction of body fat within a stipulated time. The complainant disclosed her medical history to the OP-3 and also filled in different forms provided by the clinics before undergone various surgeries. The procedure of fat reduction is called Cool Technique Procedure for which reduction of stubborn body fat will lose having no side effects in considering the medical history of the complainant. Being satisfied the complainant decided to undergo the weight reduction by Cool Technique Procedure at 08 degree celsius with a promised of 30 percent fat reduction and paid a huge amount. The OP-3 repeatedly assured the complainant that said programme shall continue under the strict super vision of medical experts and doctors to avoid slight test negligence on the part of the staff. The complainant has not get satisfactorily results in spite of spending Rs. 5,13,879.72/- till the month of February, 2018. Mr. Tamal Manna, staff of OP-3 conducted the whole procedure without the assistance of any medical expert and/ or doctor.

Further case of the complainant is that on 18.02.2018 while undergoing the Cool Technique Procedure, complainant totally shattered and sustained pain on her right side of lower abdominal area. Complainant was consoled by the OP-3 that there is no worry about the pain and burn and it is minor in nature. Ultimately, the complainant contacted private doctors for treatment of second degree burn on her body and the doctor prescribed medicines. Complainant is unable to do her normal activities which were caused her intolerable pain and mental depression for which the OPs are solemnly responsible. Being aggrieved by such acts of the OP-3, the complainant approached for refund the money due to non-satisfaction of service on their part but the OP-3 did not refund such amount. Even the OP-3 unattended the legal notice dated 04.07.2018. Being aggrieved, the complainant approached this Forum by way of consumer complaint, seeking refund of Rs. 5,13,879.72/- along with interest at the rate of 10 percent P.A., compensation quantified at the rate of Rs. 5,00,000/- and litigation cost.

The complaint is resisted by the OPs, which admitted that complainant came to OP-3 for various treatment and paid money for different services against receipt. Every service to the complainant was successful. The complainant had acknowledged and understood the entire process, post treatment effect, possible complications and then signed consent form prior to commencement of the treatment on its each stage. The results of cosmetic treatment may vary person to person and any post treatment adverse effect does not mean that the OPs have done any wrong treatment in a negligent manner. The OPs give paramount importance to the customers satisfaction by engaging qualified and trend professionals. The employee of the OPs are qualified and trend to attend every customer a high degree care and caution. The services rendered by the OPs is best known multi disciplinary, integrated scientific approach which analysis and study individuals body compositions. A team of well qualified and experience doctors, nutritionist, dietitians, dermatologist, physiologist, counselors, physio- therapist, nurses and therapist exercise their acumen and skill to formulate highly individualized programmes. The OPs never assure or guarantee about the result of any treatment , as the result vary from person to person depending upon body structure, skin type , skin indication, metabolism and other factors including diet and life style. The complainant undergone Cool Technique Procedure and the OP-3 took due care and caution of the said procedure. There was no side effect or any problem and the OP-3 advised the complainant not to use any ointment, gel or any kinds of medicine on the said part of the body but the complainant used allopathic medicine on the said portion for which she suffered pain. There is

no negligence and deficiency in service on their behalf. Thus, the OPs have prayed for dismissal of the consumer complaint with cost.

The short point for our consideration as to whether in the given facts and circumstances there was any negligence and deficiency in service on the part of the OPs during Cool Technique Procedure for which the complainant suffered loss and injury on her right side of lower abdominal area.

Decision with Reasons

Parties are allowed to lead their respective evidence in support of their case. Complainant Ms. Anna Louise Correia has tendered evidence through affidavit and relied documents annexed with the consumer complaint. On the other hand, OPs have tendered evidence through affidavit of Mr. Sandip Mitra.

We have heard the Ld. Advocate for the parties and have carefully gone through the averments in the complaint, WV filed by the OPs, evidence and documents on record.

The admission of the complainant in OP-3 VLCC Health Care Ltd. for reduction of body fat and also signed consent form prior to commencement of the treatment. The precise allegations of negligence and deficiency in service are that the technician of OP-3 undergoing Cool Technique Procedure without any doctor/expert, as a result, the complainant caused a lot of pain on her right lower abdominal area and a big maroon coloured balloon like blister hanging on her body. It is also alleged that the technician of OP-3 assured that the procedure has no side effect. Even the complainant had been to the clinic of OP-3 for 40 days with the burn for dressing. Complainant undergone extreme discomfort with medical complications and also treated through private doctor.

Per-contra, the OPs denied the allegations of negligence and deficiency in service on the ground that result of cosmetic treatment may vary person to person and any post treatment adverse effect does not mean that the OPs have done any wrong treatment in a negligent manner. The complainant undergone Cool Technique Procedure and the technician of OP-3 took due care and caution of the said procedure. The technician of OP-3 advised the complainant not to use any ointment, gel or any kinds of medicine on the said part of the body but the complainant used allopathic medicine on the effected portion for which she suffered pain.

We have considered the respective cases put forth by the parties.

In a significant judgment in India Medical Association vs. V.P. Shantha & Others (1995) 6 SCC 651 the Hon'ble Supreme Court held that service rendered to a patient by a Medical Practitioner (except where the doctor renders service free of charge the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical would fall within the ambit of 'service' as defined in Section 2 (1) (0) of the CP Act, 1986. Deficiency in service has to be judged by applying the test of reasonable skill and care which is applicable in action for damages for negligence.

In the aforesaid case, the Hon'ble Apex Court also observed as under:-

“22. In the matter of professional liability professionals differ from occupations for the reason that professions operate in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional man's control. In devising a rational approach to professional liability which must provide proper protection to the consumer while allowing for the factors mentioned above, the approach of the courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services.”

In course of final hearing Mr. Debasis Mitra, Ld. Advocate for the OPs has invited our attention that complainant took various services from the company and she paid different charges for different services, all other services taken by the complainant were successful and the only allegation of the complainant for her Cool Technique Procedure for fat reduction. He has further contended that the complainant also claimed the charges which she paid for successful service also just to extort undue money from the OPs. Ld. Advocate for the OPs has argued that Cool Technique Procedure had been conducted under the strict supervision of the Medical Expert, Doctors and the services rendered by the OP-3 is based on multi-disciplinary integrated scientific approach which analysis and studies individual body compositions.

Miss Mousomee Shome, Ld. Advocate for the complainant has argued that during Cool Technique Procedure no Medical Expert was present and Mr. Tamal Manna, Technician/Physiotherapist was conducting the whole procedure. She has further contended that complainant was totally traumatized to see a large blister which had developed on her right lower abdominal area where she got burn on the very same day i.e. on 18.02.2018 and a big maroon coloured balloon like blister hanging on her body. After the incident the OP-3 contacted the Expert/ Doctors. Therefore, it is quite clear that there was negligence and deficiency in service on the part of the OPs in spite of knowing the medical condition of the complainant.

As regards the contention of the Ld. Advocate for the OPs that the negligence and deficiency in services has not been established and allegations of the complainant are not correct, we may simply observe that it is too late in the day for the OPs to raise such plea in the instant case especially when the OPs did not take any step to get it proved on record that expert/ doctor was present during Cool Technique Procedure. OPs failed to discharge even the initial burden. Therefore, it is the obligation on the part of the OPs to either notice the Doctor and/or Expert. In such circumstances adverse inference should have been drawn against the OPs. There is also no documentary evidence on record to establish that Mr. Tamal Manna, technician is highly qualified and trained to attend on each and every customer a high degree of care, caution and professionalism.

It is true that complainant had paid Rs. 5,14,000/- in total to the OP-3 for coottech, Rajiv Body (P), Slimsonic (B), Body Therapy, Hifu Face, Arms Trim Treatment, Weight Loss, B Line treatment, Tummy Trim including CGST & SGST. The grievance of the complainant is against Cool Technique Procedure for which she paid Rs. 2,00,069/- to the OP-3 as it appears from her reply against questionnaire of the OPs. Complainant sustained 2nd Degree Cold Burn on right side of her lower abdomen area due to sheer inefficiency of service and negligence of VLCC/OP-3. Prior to Cool Technique Procedure no doctor or expert was present which clearly shows medical negligence. Dr. Agarwal had prescribed medicines for the severe burn and Dr. Tulla was also consulted by the VLCC/OP-3 for causing the injury later on. In our considered

view, there is negligence and deficiency in service on the part of the OP-3 during Cool Technique Procedure. Thus, the complainant is entitled to refund of Rs. 2,00,069/-.

Now the question is as to what should be the amount of compensation to be granted to the complainant?

What is meant by compensation within the meaning of [section 14](#) of the Consumer Protection Act 1986 has been considered by the Supreme Court in the case of Ghaziabad Development Authority Vs. Balbir Singh [(2004) 5 Supreme Court Cases 65], as under:

The word compensation is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, compensating or being compensated; thing given as recompense;.

In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or service and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.

Besides it, the settled position is that :

A patient who has been injured by an act of medical negligence has suffered in a way which is recognized by the law-and by the public at large-as deserving compensation. This loss may be continuing and what may seem like an unduly large award may be little more than that sum which is required to compensate him for such matters as loss of future earnings and future cost of medical or nursing care.

To deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice.

After all, there is no difference in legal theory between the plaintiff injured through medical negligence and the plaintiff injured in an industrial or motor accident.

Under civil and consumer law compensation paid for medical negligence is neither punishment nor reward. The principle on which damages for medical negligence are assessed is that they are to be regarded as compensation for the injury sustained or death and not as punishment for the wrong inflicted. There is no difference in the principles applied to the assessment of damages in a medical negligence case and other actions for personal injuries, e.g., in motor accidents claims.

9. In the case of medical negligence and deficiency in service in treatment of a patient damages are to be quantified under two heads pecuniary and non-pecuniary damages. Under the first head, will be those damages, which can be quantified in terms of money i.e. actual expenditure incurred by the patient complainant in getting the treatment or in the rectification of the deficient treatment, which he received as also for the resultant loss of business, etc. The non-pecuniary

damages would be for the physical and mental pain and sufferings of the patient complainant on account of such faulty treatment.

In the instant case, the complainant treated by Dr. Snehal Siddhesh Kalantri and Dr. Salil K. Panja against payment of consultancy fees. Those Doctors also prescribed medicine. Thus, the complainant incurred certain amount towards her treatment. On account of undergoing Cool Technique Procedure complainant sustained pain and burn injury on her right side lower abdominal area from that fact the complainant herself has suffered immense physical and mental pain and agony due to faculty treatment given by the OP-3.

For the kind of negligence, deficiency in service and the mis-representation made by the OP-3 award of compensation of Rs. 1,00,000/- is reasonable or commensurate with the loss, injury and mental and physical pain and agony suffered by the complainant. In our view, it would adequately meet the ends of justice.

In view of the above discussion, the consumer complaint is allowed on contest against the OP-3 in part and dismissed against OPs 1 & 2 with the following directions:-

1. The OP-3 is directed to refund of Rs. 2,00,069/- (Rupees two lacs sixty nine) only to the complainant along with simple interest at the rate of 5 percent P.A. from the date of deposit till actual payment.
2. The OP-3 is directed to pay Rs. 1,00,000/- (Rupees one lac) only as compensation on account of mental agony and physical harassment suffered by the complainant.
3. The OP-3 is also directed to pay Rs. 10,000/- (Rupees ten thousand) only towards litigation expenses to the complainant.

The above directions be complied by the OPs within a period of 45 days from the date of the order, failing which the complainant shall be at liberty to execute the order by filing application under Sections 25 & 27 of the CP Act, 1986 against the OP-3.

Order be communicated to the complainant as per rules.

[HON'BLE MR. Swapan Kumar Mahanty]
PRESIDENT

[HON'BLE MRS. Sahana Ahmed Basu]
MEMBER

[HON'BLE MR. Ashoke Kumar Ganguly]
MEMBER