

G. Pravinchand Vs. Roche Diagnostics Pvt. Ltd. and Others

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Oct-10-2011

Judge : Thiru a.K. Annamalai, M.a., M.L., M.Phil., Presiding Judicial Member
& Thiru S. Sambandam, B.SC., Member

Appeal No. : C.C.No.1 of 2008

Appellant : G. Pravinchand

Respondent : Roche Diagnostics Pvt. Ltd. and Others

Judgement :

(This complaint coming on before us for hearing finally on 19.08.2011, upon perusing the material documents, and upon hearing the arguments of counsel for both sides and having stood over till this day for consideration, this Commission made the following order.)

A.K. ANNAMALAI, PRESIDING MEMBER JUDICIAL

1. The complaint filed under Section 17 of the Consumer Protection Act- 1986

Complainant is having type 1 diabetes from July 2006 and also a heart patient and his angioplasty done in 2006 and as per the advise of the doctor on 7.4.2007 and by prescription given on that date by Dr.Raj Bal Abkchand to keep regular check on the blood sugar level and for the said purpose he was advised to purchase the

product manufactured by the opposite parties 1 to 3 Accu Check comfort and also strips for testing the sugar levels and on 26.4.07 complainant purchased one pack of Accu Check Sensor Comfort 50 manufactured by the opposite parties with expiry date of March 2008 for a sum of Rs.1,400/- from 4th opposite party. The medicine was opened in the end in the of August 2007 for using and the test results started showing abnormal and suddenly increased sugar level of about 320mg to 370mg and thereby even after taking stringent diet and exercise the readings are constantly showing average 320 to 370mg. Hence when he approached the doctor on 27.9.07 by showing the results of the blood tests the higher dose of insulin injection was prescribed on 27.9.07. The complainant purchased yet another pack of Accu Check Sensor Comfort 50 with expiry date of April 2008 batch No.449577 for Rs.1400/- from 4th opposite party bill dated 27.9.07. On 28.9.07 after taking increased doses of medicine he had certain developments due to low sugar and when he contacted another Dr.Elango who had also advised to increase in take of medicines and advised to take blood test at Sagayamatha Hospital and where the blood test were taken at 11.20.a.m and 1.20 pm with Glucometer of the Hospital which was shown results at 185 mg/ml and 220mg/ml. At the same time blood test also were made using the test trips purchased by the complainant manufactured by the opposite party it showed the results as 384 with the batch No.449492 and 249 with batch No.449577 for the 11.20 a.m and 1.00 p.m test and 375mg and 244mg respectively. Hence the above reading confirm that the products strips manufactured by the 1st opposite party with batch No.449492 was grossly defective and the other page also defective and when the doctor advised to test the blood through Glucometer owned by the Hospital at 1.25 p.m in their strips it showed reading as 224. The complainant purchased the products on the basis of news paper advertisement with the assured quality for accurate readings and due to the defective product the earlier use also the complainant filed C.C.No.111/2007 against the opposite party before the District Forum, Coimbatore pending adjudication, the complainant has faced problems in subsequent batch of stripes used the product become manufacturing defective products detrimental to the health of patients and thereby the complainant has come forward with this complaint claiming damages on account of substandard and defective product manufactured by opposite parties 1

to 3 sold by 4th opposite party claiming Rs.50,00,000/- towards compensation for physically set back and mental agony suffered by the complainant directing the opposite parties to caution the public at large and in particular to advise and educate on the possibility of defective nature of the reading directing to withdraw and recall the defective product to prevent further sale and for costs.

2. The opposite parties filed their written version denying the allegations of the complainant and contended that the complainant already filed similar complaint before the District Forum, Coimbatore in C.C.No.111/2007 which was dismissed as not prosecuted and the complainant for the similar cause of action filed this complaint in order to extract for monetary consideration and the complainant has not proved any of the allegations against the opposite parties and the opposite parties 1 to 3 are the renowned manufacturers of Accu Check products and no product is delivered with any defects or symptoms as alleged by the complainant and they are manufactured with all standard process and quality control and thereby there was no deficiency of service on their part. Further it is contended complainant is not the consumer and regarding the use of the test strips purchased by the complainant the test strips are vulnerable to any mishandling, moisture, direct sun light and over exposure to the atmosphere for the long periods of time and the stipulations which are mentioned in the insert contained in the test strips vial are mandatory requirement for obtaining optimum results by using the test strips in possession which are not followed by the complainant. Hence complaint is liable to be dismissed.

3. The complainant and the opposite parties have filed their proof affidavit and the complainant side documents are marked as Exhibit A1 to A11 and the opposite parties documents are marked as Exhibit B1 to B10 and the test results from Analytical Department, Madras Medical College regarding the strips sent for analysis are marked as Exhibit C1 and C2.

4. Point for consideration are :-

1) Whether there is any deficiency of service or unfair trade practice by the opposite parties in selling the product of Accu Check strip ?

2) What relief to the complainant ?

5. Point No.1 : In this complaint enquiry the complainant alleged deficiency in service and unfair trade practice regarding the sale of Accu Check strips used for measurement of blood level test results and in the case of complainant when the purchases made from the 4th opposite party regarding the particular batch No.449492 purchased on 26.4.2007 with expiry date in March 2008 and in batch No.449577 with the expiry date of April 2008 for a sum of Rs.1,400/- each are shown abnormal. As per Exhibit A2 cash bill which is dated 26.4.2007 and it is also contended by the complainant that he had used the test strips purchased on 26.4.2007 only at the end of August 2007 and it is the case of the complainant that all the test strips used for the check of blood level, sugar level in the blood they have shown abnormal reading and thereby the family doctor made him to take higher dose of medicines for bringing down the level of sugar which made certain difficulties in the health condition of the complainant. He has produced the blood test results done in Nilgiri X-ray and pathological laboratory as Exhibit A3 in which it is shown the regular level of his blood sugar and other details relating to the blood. He has also produced laboratory report from Sagayamatha Hospital, Coonoor as per Exhibit A8 in which comparison of tests were made by using the Glucometer of the Sagayamatha Hospital and by using the Accu Check machine produced by the complainant and in this connection, the report was given by one Dr.Elango has been marked as Exhibit A9 in which it is stated the blood sugar levels from the samples were analysed with equipment in the hospital Glucometer instrument and with the complainants Accu Check comfort meter with two sets of strips in batch No.449492 purchased on 26.4.2007 with expiry date March 2008 and in batch No.449577 with the expiry date of April 2008. The seal of this new pack was broken open in my presence today in the hospital during the current process of test and Glucometer in Sagayamatha Hospital and the tests were taken in two stages at 11.0 am and 1.10 pm and according to the results enclosed with the Exhibits A9 regarding the test made with the Accu Check strips results are shown as 384 mg, 249 mg 375 mg and 344 mg and whereas as per Exhibit A8 test done by the Sagayamatha Hospital as shown as Glucometer of Hospital at 1.10. noon 224 mg and Randum Glucose at 11.20 am 185 mg at 1.10 noon Randum 202 mg are mentioned. In this report there are two results are shown at

the time of checking of 1.10 pm through Glucometer of Sagayamatha Hospital and another Random test as 202 mg for which the nature of instrument used was not mentioned.

6. Further as per the result given in Exhibit A9 by using the strip of Sagayamatha Hospital at 11.10 am it is shown as 185 mg 1.10 pm 224 mg and at 1.10 pm through Accu Check meter 375 mg Glucometer 224 and at 1.10 pm with another strip 244. Even though it reveals that the reading of the blood sugar levels are shown as higher than the readings of the Glucometer used by the Hospital it is not stated at what condition the tests were taken whether the complainant taken test with food or without food and the concerned Glucometer used by Sagayamatha Hospital and the complainant own Accu Check meter were all not produced before this Commission to find out whether those machines are reliable and they are in perfect conditions as prescribed by the concerned companies, date of purchase mode of doing the test apart from the use of strips the implements used for taking out of blood, quantity of blood used in both meters are all relevant factors to decide the defects or credibility of those machines or of the strips used. In the report it is said those two packs purchased by the complainant were opened in the presence of Dr.Elango on 2.10.2007. Whereas in the complaint the complainant alleged that he has purchased the test strips having batch No.449492 on 26.4.07 and used the same by the complainant in the end of August 2007. But in the Exhibit A9 it was stated that those packs seals were opened by breaking the seal in the presence of Dr.Elango on 2.10.2007 after 3 months from the alleged are by complainant in his presence, which would go to show the fallacy of the complaint. The complainant failed to produce the Accu Check Sensor meter which is used by him for finding the blood result by using the strips as to prove that the meter was not defective and the defects are only in the strips purchased. Further the opposite parties contended that the Accu Check strips are to be used only in accordance with the stipulations given in the instructions which are marked as Exhibit B5, B6, B7 and on the complainants side Exhibit B the same is marked as Exhibit A11. According to the stipulations it is contended by the opposite parties each and every vial containing strips packed having silicon material inside the lid of the vial to avoid the moisturization of the strip and to become dry while using the strip and those strips are to be used immediately after opening the vial by following the

procedures in applying the blood on the strip and insert method to get the optimum result of the reading and it depends upon the factor which should likely to give erroneous results primarily involved the mishandling of the trip once the vial was opened and the fact that the test trips contained an enzyme which was very sensitive to exposure to moisture, high or low temperatures, or any type of mishandling and wrong storage etc.,. Whether following of such stipulations were not explained while using the strips or by the complainant.

7. Further the sample trips produced before the Commission were sent for analysis to the Madras Medical College and the reports are marked as Exhibit C1 and C2. For this test 10 trips of Accu Check Sensor Comfort from batch No.449492 were sent for finding out the defect and to give the report on or before 27.3.08 as those strips are due for expiry in March 2008 and in spite of the same the analysis were carried only after that period and report was given on 24.4.08 in which results of Accu Check strip and Glucometer were given and as per the readings the Accu Check readings are shown higher value than the Glucometer reading in all the strip and the opposite party contended the strips were sent that openly exposed to air without containing in the vial and sealed lid and without code strip which is to be used in the analyzing meter and the instructions regarding the use of Accu Check strips as per Exhibit B4 and B5 are not followed and the results are not acceptable. These contentions are fully acceptable as these strips were all sent without packing in any sealed vial and there were possibility of exposure in open air moisture etc., and the results were all related to tests done after the expiry date on 27.3.08. Hence the results in Exhibit C1 and C2 in no way going to help the either side and it has to be discarded.

8. The opposite parties relied upon the ruling reported in I (2011) CPJ page 9 in which it is reported as follows :- Consumer Protection Act, 1986 Sections 2(1)(g), 2(1) (r), 14(1)(d), 15 Building Defective cement Deficiency and unfair trade practice alleged Forum allowed complaint Hence revision Contention, in Commissioner report no specific finding about quality of cement Accepted Cracks developed in building, might have occurred due to some other reasons also, and it cannot be attributed solely to bad quality of cement No concrete evidence to label cement as substandard No unfair trade or deficiency proved Forum order set

aside.

Accordingly in our case also the abnormal reading of the blood level by the use of Accu Check strips purchased by the complainant may be due to various some other reasons and it cannot be attributed solely because of bad quality of the strips manufactured.

Further the opposite parties have contended that their products are worldwide use of universal acceptance and the products are made under strict quality control and check and in this regard they have filed relating to the certificate regarding conformity quality control and the register maintained for the relevant batch sales register for the relevant period as per Exhibit B7 to B10 which are all going to show that it is very difficult to prove that the products made by the opposite party relates to the monitoring of blood sugar level which is one of the important health care management under which any defective is made it would cause serious implications through out the world especially in the case of health care management and unless the defects or deficiency are to be proved with specific nature of allegation and with relevant materials which were not done in this case. Further it was elicited by the opposite parties that the complainant has filed earlier complaints regarding the same nature. But against some other dealer in Coimbatore address and filed the copies of the complaint, reply and order of the District Forum in C.C.No.111/2007 which was dismissed as complainant failed to file proof affidavit in spite of written version filed by the opposite parties on 31.1.2008 as Exhibit B1 to B3. It is the contention of the opposite parties in spite of knowing fully well that the alleged defects in the use of Accu Check strips for the purpose of blood sugar level monitoring in view of the earlier use by him alleged that he used the strips in the year 2007 alsowhereas in the previous complaint he alleged to have used the strip during the year 2006 which is unbelievable and this point cannot be brushed aside and it is evidence from the above discussions and details as elicited by the opposite parties and the records produced by them that complainant seems to have wantonly and purposely filed this complaint in order to get some monetary benefit deriving from the outcome of complaint and thereby it is crystal clear that he has not come with the clean hands and in those circumstances we are of the view that the complaint is to be dismissed as

frivolous, vexatious and with exemplary costs.

9. In the result, the complaint is dismissed with cost of opposite parties. Further the complainant is directed to pay a sum of Rs.5,000/- as exemplary costs to the opposite parties 1 to 3 under Sec.26 of the Consumer Protection Act 1986 and the complainant shall pay the above amount within two months from the date of this order failing which the opposite parties are entitled to proceed under Sec.27 of the Consumer Protection Act 1986.

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