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**Consumer Interests Protection and Research Association (Cipra) Vs. Apollo Glkeneagles Pet-ct Centre and Others**

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**Court** : Andhra Pradesh State Consumer Disputes Redressal Commission  
SCDRC Hyderabad

**Decided On** : Aug-05-2010

**Judge** : D. Appa Rao, President, the Honourable Mrs. M. Shreesha, Member  
& the Honourable Mr. R. Lakshminarsimha Rao, Member

**Appeal No.** : C.C. No. 11 of 2008

**Appellant** : Consumer Interests Protection and Research Association (Cipra)

**Respondent** : Apollo Glkeneagles Pet-ct Centre and Others

**Judgement** :

Oral Order:

R. Lakshminarsimha Rao, Member:

The complaint is filed through the Consumer Council, Consumer Interest Protection and Research Association (CIPRA) Hyderabad seeking direction against the opposite parties, Apollo Gleneagles and five others to pay Rs.10 lakhs towards medical expenditure, Rs.12 lakhs for loss of income and Rs.2 lakhs towards compensation for mental agony, a total amount of RS.24 lakhs with interest thereon.

The averments of the complaint are that the complainant had undergone whole body PET CT Scan on 23.7.2007 by making payment of Rs.27,000/- and Rs.21,500/- to the opposite party no.1. The opposite parties no.4 and 5 issued report stating that the brain position i.e., cerebral, hemisphere, basal ganglia, verticular system, posterior fossa structure and bony calvaniam are normal. It was reported that every organ of the complainant was normal. On 27.10.2007 the complainant had undergone for whole body PET CT Scan for the second time and this time the CT findings did not reveal brain position. The scan was taken from the neck portion omitting the brain of the complainant. The health condition of the complainant had begun to deteriorate with the complaints of pain in head and back, abdomen and loss of sight. On 1.11.2007 the complainant approached Yashoda Hospital where he had undergone MRI of brain without and with contrast and the report revealed that the complainant was suffering from brain cancer since a long time and he needed severe precautions.

The first report issued by the opposite parties no.4 and 5 is a wrong report. The complainant was suffering from cancer long prior to the date of first report issued by the opposite parties. The second report omitted the brain portion of the complainant. The complainant had spent Rs.10 lakh for his treatment. The complainant has got issued notice through the consumer information centre to the opposite parties for settlement of the dispute. The process of counseling was not successful as the opposite parties denied any negligence on their part. Hence, the complaint.

During the pendency of the complaint, the Oriental Insurance Company was impleaded as opposite party no.6 by virtue of insurance policy bearing No.431510/48/2007/1698 issued in favour of the opposite party no.1.

The opposite parties no.1 to 5 filed common counter contending that the complainant approached them on the advice of Dr.B.Surendra of Yashoda Hospital and accordingly PET CT Scan of the entire body including the brain on 23.7.2007 was taken which reported normal. Dr.Surendra again referred the patient in the month of October 2007 for another PET CT Scan. Dr.Surendra informed the opposite parties no.1 to 5 that as the first PET CT Scan of the brain

was normal and the minimal residual disease was in abdomen only he suggested for second PET CT Scan from base of the skull to mid thighs. During the second referral there was no specific request by Dr.Surendra to include the brain. Accordingly, the second PET CT Scan was taken on 27.10.2007. The report of PET CT scan and MRI scan are not comparable as the PET CT Scan was done for the entire body and MRI was done only for brain. PET CT Scan helps to diagnose the cancer predominantly in the body, MRI helps to diagnose cancer spread to the brain, even if it is minute. The complainant has not taken any treatment or advice from the opposite parties. The referral doctor was from Yashoda Hospital. The two PET CT Scan reports given by the opposite parties are correct. The uncontrollable condition of the cancer of the complainant cannot be attributed to the opposite parties. There was no deficiency of service on the part of the opposite parties. Hence, prayed for dismissal of the complaint.

On behalf of the opposite party no.6, written version was filed contending that liability of the opposite party no.6 is as per the terms and conditions of the insurance policy. The opposite party no.6 is not liable to pay any amount as the opposite party no.1 to 5 had not informed of the pendency of the complaint to the opposite party no.6. In the additional version filed at the subsequent stage of the complaint, it was stated that the opposite party no.6 has not issued any insurance policy in favour of the opposite parties no.1 to 5. Apollo Hospitals Enterprises Limited has obtained the error and omission medical establishment policy from the opposite party no.6 for the period from 24.3.2007 to 23.3.2008 for a sum of Rs.3 crores. The policy was not renewed with the opposite party no.6. Even if it is assumed that the insurance policy covers the opposite parties no.1 to 5, the terms and conditions of the policy are binding and that if any claim arose during the policy period intimation has to be given and in case of non-renewal of the policy, it has to be intimated within 90 days from the date of expiry of the policy. The claim arose on 23.7.2007 and 27.10.2007. The implead petition was filed on 14.8.2008 and by the time the policy was expired i.e., on 23.3.2008 and the extended period of claim intimation was elapsed as the policy was not renewed with the opposite party no.6. As per Condition No.5-B of the policy, information regarding the claim must be given within the policy period. The intimation of the claim by the opposite parties no.1 to 5 is not in accordance with the terms and conditions of the

insurance policy. Therefore, the opposite party no.6 is not liable to pay any amount to the complainant.

The complainant has filed his affidavit and got marked Exs.A1 to A11.

On behalf of the opposite parties, the opposite parties no.4 and 5 have filed their affidavits and the Regional Manager of the opposite party no.6 insurance company has filed his affidavit and Exs.B1 to B7 had been marked.

The points for consideration are:

1) Whether the opposite parties had committed any deficiency in service?

2) To what relief?

POINT NO. 1 The dispute in a narrow compass is in regard to the PET CT Scan reports pertaining to the complainant, issued by the opposite parties no.1 to 5. The complainant claims the first report to be incorrect and the second incomplete; and both are defective whereas the opposite parties contend that the two reports in question are correct in all aspects. On 23.7.2007 the complainant had undergone PET CT Scan at the opposite party no.1 PET-CT Centre. The opposite party no.1 collected an amount of rs.27, 500/- evidenced by receipt dated 23.7.2007 issued by the outpatient counter of the opposite party no.1. The report contains the headline Whole Body PET-CT Scan. It is noted in the report that the entire body of the complainant from the vertex of the skull to mid thigh was subject to the CECT and PET-CT Scan after injecting 16.0 mCi of  $^{18}\text{F}$  FDG intravenously. The CT finding insofar as the neck thorax abdomen and bones are not disputed.

The complainant submits that the CT findings in regard to the brain are incorrect. The complainant refers to the MRI report dated 1.11.2007 issued by Yashoda Hospital in support of his contention that the report dated 23.7.2007 issued by the opposite party no.3 focusing on the CT findings of brain. The relevant findings of the opposite parties no.3 and 4 are as under:

CT Findings:

BRAIN

- Both cerebral hemispheres are normal
- Basal ganglia and thalami are normal
- Ventricular system is normal
- Posterior fossa structures are normal
- Bony calvarium is normal

These findings when compared with those of report dated 1.11.2007 of MRI of Brain without and with contrast issued by Yashoda Hospital Hyderabad show significant change. The findings of the report dated 1.11.2007 of Yashoda Hospital are as under:

## FINDINGS

Known case of N.H.L.

Evidence of lobulated intensely enhancing lesion in right occipital lobe with perilesional oedema.

Lesion is isointense to gray matter on T2 and hypointense on T1.

Size of lesion: 29x26x26 mm.

Rest of the cerebral parenchyma shows normal signal characteristics.

Ventricular system is normal

Subarachnoid cisternal spaces and cortical sulci are normal

Cerebellum, pons, medulla and midbrain are normal.

No shift of midline structures.

Pituitary gland, infundibulum and optic chiasm are normal

Intracranial arteries and dural sinuses are normal to the extent visualized.

The impression as given by the consultant radiologist of Yashoda Hospital is Lobulated enhancing mass in right occipital lobe with perilesional oedema in close proximity with falx cerebri most likely S/o Secondary Lymphoma. (emphasis supplied).

Thus, the complainant relies on the change as found in the report of Yashoda Hospital compared to what was stated in the report dated 23-07-2007 of the opposite party no.1 to contend that the report issued by the opposite parties is incorrect. The impression in the report dated 23.7.2007 issued by the opposite parties no.3 and 4 reads as under:

**IMPRESSION:**

-PET-CT shows evidence of residual disease in the mesenteric l  
lesion probably node.

-Otherwise survey negative for the distant spread

The opposite parties no.3 and 4 maintained correctness of their findings in the PET-CT scan report particularly in regard to the brain which they state as normal . The opposite parties no.3 and 4 have filed their affidavits which are the replica of each other. At paragraph 4 of the affidavit of each of the opposite parties no.3 and 4, a statement to the effect that there is distinction and difference between PET-CT Scan and MRI has been made. The relevant portion of the affidavit of the opposite parties no.3 and 4 reads as under:

The report of PET-CT Scan and MRI scan are not comparable as the PET-CT Scan was done for the entire body and MRI was done only for brain. While PET-CT Scan helps to diagnose the spread of cancer predominantly in the body, MRI scan helps to diagnose cancer spread to the brain, even if it is minute. I may also submit at this juncture that the word C in CT Scan means computed and T means Tomography but not otherwise, as put forth by the defacto complainant.

The opposite parties no.3 and 4 have not substantiated their version that the PET-CT Scan helps to diagnose the spread of cancer in the body while MRI is useful to

be diagnose spread of the cancer to the brain. No literature or any evidence in support thereof has been filed by the opposite parties.

There is significant difference between the PET CT scan and MRI. Howsoever the degree of difference between them is, it does not go to show that the PET CT Scan is limited to the purpose of showing the spread of cancer in the body except the brain. PET CT scan is useful for early diagnosis of disease, accurate staging and restaging of disease, efficacy and monitoring of treatment, differentiating between malignant and benign tumors and determining if cancer has returned after treatment. Magnetic resonance imaging (MRI) can be used to look at almost any part of the body. It is most often used to study the brain and spinal cord, the heart and blood vessels, other internal organs, such as the lungs or liver, bones and joints, and breasts. An MRI scan can also be used to assess damage to the cartilage, tendons, muscles and ligaments as well as other types of injury that can damage a joint. The complainant, by the date of undergoing PET-CT Scan at the opposite party no.1 had undergone treatment for cancer. Thus, it is difficult to say whether the PET CT Scan was not a facility adequate enough to point out spread of cancer to the brain of the complainant by looking at the PET-CT Scan report dated 23.7.2007 issued by the opposite party no.1.

Coming to the aspect of the second PET-CT Scan report dated 27.10.2007 issued by the opposite parties, it relates to the whole body PET CT Scan. The CT findings had been recorded in respect of neck, chest, abdomen and bones. The brain portion was conspicuous by its being omitted which the opposite party contends that it was not prescribed by Dr.Surendra whereas the complainant contends that the doctor had advised for the whole body PET CT Scan which included brain among the neck, chest abdomen and bones. It is essential and necessary to go through the letter issued by Dr.D.Surendra who referred the complainant on both occasions for PET CT Scan to the opposite parties no.1 to 5. The document reads as under:

Case of NHL c Brain and Bone metastasis with RPLN Enlargement.

For this patient I have suggest for an whole body PET-CT Scan on two occasions. On the first occasion they have done whole body scan including the Brain. While

on the second occasion they did not do the brain scan.

While on the third time they included the brain on similar prescription.

As per me, they should have either not done (brain scan) on the first occasion or they should have done on the 2nd occasion on which could have avoided inconvenience to the patient and the family members.

There is no evidence to show that the opposite parties no.1 to 5 had omitted the brain scan of the complainant on the second occasion on the oral advice of the doctor. The contention of the opposite parties that Dr.Surendra had not prescribed for whole body PET CT SCAN is falsified by the letter issued by Doctor Surendra which clearly spelt out the doctors advice for whole body PET CT SCAN of the complainant on both occasions.

The Supreme Court had an occasion to consider the concept of medical negligence focusing on the wrong diagnostic feature relating to transfusion of mismatched blood and its impact on the health condition of the patient in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Jaspal Singh and Ors reported in II (2009) CPJ 92

The Apex Court approved what Lord Macmillan held in *Donoghue v. Stevenson*, with regard to negligence. Lord Macmillan held "The law takes no cognizance of carelessness in the abstract. It concerns itself with carelessness only where there is a duty to take care and where failure in that duty has caused damage. In such circumstances carelessness assumes the legal quality of negligence and entails the consequences in law of negligence. The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty."

The Supreme Court considered in detail the impact of negligently issued diagnostic report leading to the mismatched transfusion of blood to the patient and observed as under:

Wrong blood transfusion is an error which no hospital/doctor exercising ordinary care would have made. Such an error is not an error of professional judgment but in the very nature of things a sure instance of medical negligence. The hospital's breach of duty in mismatched blood transfusion contributed to her death, if not wholly, but surely materially. Mismatched blood transfusion to a patient having sustained 50% burns by itself speaks of negligence.

In the case on hand, doctor Surendra pointed out that had the opposite parties acted upon his advice, they could have done the brain scan on the second time and would have not done the brain scan on the first occasion. Therefore, the opposite parties no.1 to 5 are guilty of negligence in omitting for the brain scan of the complainant on the second occasion i.e., on 27.10.2007 and thereby rendered deficient service.

POINT NO.2 The complainant has claimed an amount of Rs.24 lakhs stating that he had suffered mental tension and he could not know that he was suffering from cancer till he had approached Yashoda Hospital. In the reports dated 23.7.2007 and 27.10.2007 it is clearly stated that the complainant had undergone chemotherapy as also radiation and the PET-CT Scan was advised for the purpose of knowing the status of the disease. It can be understood that the complainant being a cancer patient had concern whether the NHL DLBCL would spread to the brain. The trauma of such patient could be understood as the NHL DLBCL would spread easily and speedily to the other parts of the body. The opposite parties no.1 to 5 had ignored the advice of Dr.Surendra and omitted to take the PET-CT Scan of brain of the complainant on 27.10.2007. The complainant was diagnosed with the spread of disease to the brain in Yashoda Hospital as revealed in MRI report dated 1.11.2007 of brain without and with contrast report. It is evident by the report that in lesion was enhancing in the right occipital lobe. The complainants states that had the opposite parties taken the brain PET-CT Scan on the second occasion on 27.10.2007, the treating doctor could have opted for different dose in view of the stage of the disease. Taking into consideration of all these circumstances, we are of the opinion that an amount of Rs.50,000/- if awarded on all counts would meet the ends of justice.

It was contended on behalf of the opposite party no.6 that the insurance company was not put on notice by the opposite parties no.1 to 5 in regard to the claim filed by the complainant. It is contended that the insurance policy was issued for the period of one year from 24.3.2007 to 23.3.2008 in favour of Apollo Hospitals Enterprises Limited but not in favour of the opposite party no.1. The two contentions are mutually destructive as the contention that the insurance company was not given intimation of the claim by the opposite parties no.1 to 5 would destroy the other contention that the insurance policy does not cover the risk relating the claims lodged on account of lapse in the diagnosis made at the opposite party no.1. Hence, there is no substance in contending that the insurance policy was not issued in favour of the opposite party no.1.

In M/s Oriental Insurance Company Limited Vs. State Consumer Disputes Redressal Commission of A.P. and others in W.P.No.25061 of 2006, the High Court held that mere impleading the insurance company and producing the insurance policy does not amount to proof of the insurance companys liability. It is contended by the learned counsel for the opposite party no.6, insurance company that the claim intimation was not made at the earliest as also not within the mandatory period of 90 days from the date of expiry of the insurance policy. The opposite parties no.1 to 5 had not pleaded or put-forth any explanation for non-compliance of the essential requirement of the insurance policy. In the circumstances, we do not propose to decide the liability of the opposite parties no.1 to 5 vis--vis the opposite party no.6. It is left for the opposite parties no.1 to 5 to agitate their grievance against the opposite party no.6 in an appropriate forum.

In the result the complaint is allowed. The opposite parties no.1 to 5 are directed to pay an amount of Rs.50,000/- to the complainant along with costs of Rs.5,000/-. Time for compliance four weeks. The complaint against the opposite party no.6 is dismissed. No costs.

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