

BEFORE THE DISTRICT FORUM (SOUTH - WEST) LOCAL
SHOPPING CENTRE, SHEIKH SARAI, PHASE- II, DELHI

CONSUMER DISPUTE CASE NO. _____ of 2018

IN THE MATTER OF:

Mr. Michal Siemaszko
R/o Gierymskich 4/9
30-824 Krakow,
Poland

Ph: No. +48 723 039 978

Email Id: mhsiemaszko@fastmail.net &
mhsiemaszko@7thraylabs.com

....Complainant

Versus

1. Dr. Sangeeta Taneja, Consultant
Indraprastha Apollo Hospitals, Sarita
Vihar, Delhi- Mathura Road, New
Delhi-110076

Opposite Party No.1

2. Dr. Amarnath Jena, Sr. Consultant
Indraprastha Apollo Hospitals, Sarita
Vihar, Delhi- Mathura Road, New
Delhi-110076

Opposite Party No.2

3. Apollo Hospitals,
Sarita Vihar, Delhi- Mathura Road,
New Delhi-110076
Through its Chairmen/Managing Director/MS

Opposite Party No. 3

4. Mr. Anuj Gupta,
The Pet Suite, Indraprastha Apollo Hospitals,
Sarita Vihar, Delhi- Mathura Road,
New Delhi-110076

Opposite Party No.4

**COMPLAINT UNDER THE PROVISIONS OF THE CONSUMER
PROTECTION ACT 1986 FOR MISDIAGNOSIS LEADING TO
MEDICAL NEGLIGENCE BY THE OPPOSITE PARTIES**

To the Hon'ble President and Members of the South West Delhi
District Consumer Forum:

The Complainant above named most respectfully showeth:

1. The present complaint (hereinafter referred to as the "Complaint") is filed under the provisions of the Consumer Protection Act, 1986 for misdiagnosis leading to negligence committed by Opposite Parties.
2. That the brief facts of the complaint are as :
 - a. The Complainant, Mr. Michal Siemaszko, resident of Gierymskich 4/9, 30-824 Krakow, Poland, was assaulted in January 2014 in Poland which resulted in permanent bodily injury, symptoms of which include scar in left pelvic region caused by penetrating trauma as well as neurological, andrological and urological problems. The complainant, since then, underwent diagnostics which concentrated mainly on urological problems, specifically urine retention problems as well as sexual dysfunction.
 - b. In order to obtain a comprehensive diagnosis, in February 2018 the complainant started a series of radiological and nuclear medicine diagnostic imaging tests, and at first the complainant underwent CT scan of pelvis at Radiology Center in Vienna, to be followed up with further more detailed CT & MRI studies.
 - c. The report complainant received from said CT scan of pelvic area conducted on 13 February 2018 clearly correlated with medical problem being diagnosed, indicating:

(...) Skin scar is also detectable tomographically as low subcutaneous compression zone in the course via the proximal and anterior portion of the tensor fascia latae muscle. (...) Severe cutaneous scarring (...) around the left superior anterior iliac spur and neighboring parts of the tensor fascia lata muscle. We recommend a consultation of a specialized centre for reconstructive peripheral nerve surgery (e.g. Millesi Center) after neurological testing. (...)

(Copy of sworn English translation of report from computed tomography examination of pelvis, conducted on February 13, 2018, at Radiology Center in Vienna, Austria is appended as CW-1/A)

d. Since good quality facilities to conduct detailed CT & MRI studies were not available in Poland, complainant had to undergo testing outside Poland, starting with Radiology Center in Vienna, Austria. Because of availability of high-end radiology and nuclear medicine equipment in India, complainant contacted opposite party no.4 to confirm availability of required tests at their facility.

e. Post getting the confirmation from opposite parties through opposite party no.4 over the phone regarding availability of radiological and nuclear medicine diagnostic imaging tests, the same was confirmed by opposite party no.4 over email which mentioned that required diagnostic imaging tests can be conducted at Apollo Hospital.

(Copy of email exchange between complainant and opposite party no. 4 from February 13th 2018 is appended CW-1/B)

f. The complainant, after receiving written confirmation of availability of diagnostic imaging services from opposite party no.4 and only on their assurance of best diagnosis facility and with referrals for further tests, made travel arrangements to visit New Delhi, India.

g. The complainant arrived in New Delhi on 28 February 2018 and on the next day, March 1st, visited "The Pet Suite" / Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi and spoke in person with opposite party no. 2 for over one hour regarding diagnostic imaging tests to be performed. During this meeting, the complainant presented referrals from his doctor, reports from previous tests and again described symptoms he needed comprehensively diagnosed. Opposite party no.2 confirmed again to complainant that all of the diagnostic imaging tests could be performed in Apollo hospital – including MR

Neurography, Urography, soft tissue assessment around scar area, as well as 3D reconstruction and interpretation of data collected – and that those tests were to be done as part of whole body PET/MRI scan, i.e. both general and focused (Neurography, Urography, etc.) tests were to be done as part of one appointment. After said meeting, complainant sent written summary via email to opposite party no. 2 and opposite party no.4, to which opposite party no. 2 replied later that day, confirming said arrangements.

(Copy of email exchange between complainant and opposite party no. 2 from March 2nd 2018 is appended as CW-1/C)

h. The complainant, thereafter, on instructions of opposite party no.2 booked the nearest available appointment for PET/MRI test – during which all of the aforementioned testing was to be performed, including MR Neurography and soft tissue assessment around scar area – for March 5th 2018 at 8 am.

i. On March 3th 2018, the complainant visited Indraprastha Apollo Hospital in order to do blood test required for PET/MRI test – specifically urea and creatinine. Later that day, the complainant received an email from opposite party no.4 regarding payment of PET/MRI test, to which the complainant replied, re-emphasizing the scope of tests to be performed on Monday, March 5th, i.e. MR Neurography, Urography, soft tissue assessment around scar area, etc.

(Copy of email exchange between complainant and opposite party no. 4 from March 3rd 2018 is appended as CW-1/D)

j. The complainant, on March 5th 2018, after fasting as per requirements, at around 8:00 AM picked up blood test results, deposited a sum of Rs. 60,500/ – vide Bill no. DEL-OCS-1729715 dated 05.03.2018, time 8:08:03 – and came to “The Pet Suite”/Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi for scheduled diagnostic imaging tests.

(Copy of payment receipt is appended as CW-1/E)

- k.** The complainant spent there over 5 hours that day, including close to 2 hours in PET/MRI device. After the tests were finished, the complainant was expecting to receive the DVD with DICOM data within 30 minutes, as it is generally practiced in all diagnostic imaging centers, but instead the complainant received contradicting information – some of the opposite parties confirming that the complainant would receive DVD with DICOM data as is practiced everywhere else, and some denying saying to wait until the next day.
- l.** The complainant, expecting to receive the DICOM data immediately after test, called opposite party no.4 to ask what was the problem to which the opposite party no.4 first replied that the DVD with DICOM data would be available later that day, but few minutes later informed the complainant that head of the department does not allow the DVD to be released until the next day.
- m.** Thereafter, on March 6th 2018, late in the afternoon, the complainant visited “The Pet Suite”/ Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi, where the complainant was given printed pictures, report and one of the DVDs with DICOM data. At that time, the complainant was informed by opposite party no.2 that there was some problem, details of which were not disclosed, and that the complainant would receive DVD with remaining DICOM data the next day.
- n.** The report received by the complainant that day from diagnostic imaging tests performed on March 5th at "The Pet Suite" / Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi was apparently performed incorrectly, as it is in complete contradiction to reports from the tests and consultations performed prior to March 5th test at "The Pet Suite" in Apollo Hospital and afterwards, including CT scan done on February 13th 2018 at Radiology Centre in Vienna, Austria, MR

Neurography scan done on March 12th 2018 at Mahajan Imaging in New Delhi, India, USG of nerves done on April 6th 2018 at Millesi Center in Vienna Austria, and Neurological and Plastic surgery consultation done on April 20th 2018 at Millesi Center in Vienna Austria.

The report received by the complainant from diagnostic imaging tests performed on March 5th at "The Pet Suite" / Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi, stated:

"IMPRESSION: No demonstrable soft tissue lesion in pelvis and inguinal region and no other metabolically active abnormally in the remaining whole body. Suggest clinical correlation."

i.e. that supposedly there are no issues whatsoever, which is completely contrary to what is actually the case, as corroborated by aforementioned tests and consultations performed elsewhere.

(Copy of report from magnetic resonance examination including neurography and soft tissue assessment around scar area, conducted on March 5, 2018, at "The Pet Suite"/Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi, India is appended as CW-1/F)

- o. Later that day, it also turned out that the DICOM data the complainant received was missing neurography sequences completely. In email communication with opposite party no.2 and opposite party no.4, it was mentioned numerous times by the complainant exactly which tests were to be conducted – including MR Neurography and soft tissue assessment around scar area – which the opposite parties confirmed in person and in written email communication with the complainant would be performed all as part of "Whole Body PET/MRI" test which the complainant underwent on March 5th 2018.

(Copy of email exchange between complainant and opposite parties no. 2 and no. 4, from February 13th 2018, March 2nd 2018 and March 3rd 2018, is appended as CW-1/G)

p. Since diagnostic imaging tests done on March 5th 2018 at "The Pet Suite" / Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi were apparently performed incorrectly – as report from that test was completely contradictory to reports from tests performed thus far and afterwards – the complainant scheduled and on March 12th underwent additional testing – including MR Neurography, Urography, soft tissue assessment as well CT Urography – at Mahajan Imaging Center at E-19, Defence Colony, Main Ring Road, New Delhi – 24.

q. Report from MR Neurography test of pelvis the complainant performed on March 12th 2018 at Mahajan Imaging clearly expands on findings from CT scan report from Vienna, Austria, and further corroborates symptoms of medical problem the complainant needs solved, i.e.: (...) *Functional nerve imaging reveals hourglass-shaped restricted diffusion in the lateral cutaneous nerve of the thigh across the inguinal ligament (...) entrapment of the lateral cutaneous nerve of the left thigh due to scarring in the left tensor fascia lata with altered signal and restricted diffusion (...) thickening and altered signal in the left genitofemoral nerve (...)*

(Copy of payment receipt as well report from magnetic resonance examination of nervous system, conducted on March 12, 2018 at Mahajan Imaging in New Delhi, India, are appended as CW-1/H1-H2)

r. In April 2018, the complainant underwent further tests and consultations with neurologist and plastic surgeon, results of which corroborate findings from CT scan done on February 13th at Radiology Center in Vienna, Austria, as well as MR Neurography done on March 12th 2018 at Mahajan Imaging in New Delhi, India.

Report from high-resolution ultrasound of nerves conducted at Millesi Center in Vienna, Austria, states: (...) *Ultrasound reveals a marked swelling of the femoral cutaneous lateral nerve at the level of the anterior superior iliac spine. The nerve swelling extends approximately for 15mm. (...) The cross sectional diameter of the thickened nerve is 3 times above the normal value. The findings correspond to the previous MRI. (...)*

Report from consultation with neurologist and plastic surgeon at Millesi Center in Vienna, Austria, states: (...) *We studied the provided recently performed Neuro MRI of the patient pelvis with our radiologist Doz. Dr. Bodner. The MRI showed a thickening of the left lateral cutaneous femoral nerve at the area of the positive Tinel sign and a thickening of the left genitofemoral nerve at the anterior-medial aspect of the psoas muscle, a region just before the genital branch of the genitofemoral nerve enters the spermatic cord. In addition, Doz Bodner performed a high-resolution ultrasound study of the inguinal area on the left side which showed the same thickening of the nerve and scar formation. The distance from the hyper-pigmented spots in the inguinal area on the left side to the point where the left lateral cutaneous femoral nerve shows a significant scar and an hour-glass deformation was measured with about 5cm. (...) In summary, we found a clear pathology of the lateral cutaneous femoral nerve and the to a lower extent of the genitofemoral nerve on the left inguinal area. There are several punctiform skin hyper-pigmentation in the inguinal area and the distance to the lesion of the most superficial nerve is about 5cm (...)*

(Copy of reports from ultrasound examination of nervous system, conducted on April 6, 2018, as well as from examinations and consultations with physician specializing in neurology and plastic surgery, conducted on April 6 and 20, 2018, at the Millesi Center, Vienna Private Clinic, in Vienna, Austria, along with selected images from both examinations conducted, are appended as CW1/I)

- s. Therefore, a perusal of findings of reports from properly conducted tests and consultations – i.e. from Radiology Center in Vienna, Austria, from Mahajan Imaging in New Delhi India, as well as from Millesi Center in Vienna Austria – clearly indicates it is report from Apollo Hospital that is erroneous. No properly conducted diagnostic imaging test could ever show no symptoms where symptoms are clearly visible when looked at with Computer Tomography, Magnetic Resonance and Ultrasound medical imaging modalities.
3. Due to the apparent mistake by the Doctors at “The Pet Suite”/Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi, who were responsible for properly conducting and reporting test results, what was missed by the doctors is not only severe cutaneous scaring, fascia compression and nerve entrapment but also lymphangioma in the abdomen of the complainant, whereas the same is being found to be there in the reports conducted by other medical imaging centers.
 4. Therefore, the aforesaid act on the part of the aforesaid opposite parties clearly indicates that they have committed a mistake which is at par with the word “Wrong Treatment” and the real problem was being ignored by them which has harmed the complainant and for which the opposite parties are liable for the injury caused to the complainant on their accent of being negligent.
 5. Furthermore, there is a liability upon the opposite parties as the complainant has suffered injury on account of wrong diagnosis on the part of the opposite parties as the complainant had to conduct the same test again at Mahajan Imaging Center and the complainant, being a resident of Poland, who has come to India specially after hearing the praises of medical professional, had to suffer a lot due to misdiagnosis on the part of the aforesaid opposite parties who, post receipt of taking money, either did not carry out the test properly or gave a false report. Thus, the aforesaid opposite parties are liable for breach of duty.

6. On April 5th 2018, a Legal Notice was served to opposite parties calling for refund, but despite two months having passed there was no reply from the opposite parties. Because of lack of response, and still willing to settle these matters out of court, on June 20th 2018 the complainant contacted the opposites party no.4 via phone. During that phone conversation the opposites party no.4 confirmed Legal Notice was received and that supposedly management of Apollo Hospital sent a reply via postal mail, but no such reply was received by either the complainant nor his legal representative. The complainant followed up this conversation with email message requesting information when such reply was sent and to what address, however the opposites party never replied and stopped taking calls from the complainant afterwards, which itself further confirms the admission of the medical negligence on the part of the opposite parties.

(Copies of Legal Notice and email exchange between complainant and opposite party no. 4 on June 20th and 25th 2018 is appended as CW-1/J)

7. In catena of judgments, the apex court explained the concept of negligence and gave following observations:

a) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.

b) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

8. That the present complaint is based upon the medical malpractice due to misdiagnosis on the part of the opposite parties which would have led to incorrect treatment as the report given by the opposite

parties does not suggest any injury to the complainant whereas on the strength of the other four reports the complainant is diagnosed with the problem so in mistake in the diagnosis is itself an act of medical negligence. In the present case by making the payment and opting for the specific medical fact there exists a doctor – patient relationship. By giving a wrong diagnosis it is apparent the opposite parties were negligent or they were not reasonably skilled and competent to conduct the tests.

9. That the opposite parties did not take into consideration that a proper diagnosis is essential for appropriate treatment as the doctor had to make proper evaluation of the patient after seeing the report and in the present case opposite parties committed diagnostic error which led to inaccurate result. Further, the opposite parties ignored that the correct diagnosis is required in a timely manner and an inaccurate report can lead to negative impact on the treatment.
10. Due to the fault of opposite parties, the complainant had to suffer anxiety, stress, expenses for undergoing another tests from Mahajan Imaging Centre and to incur additional costs besides suffering from mental agony and harassment.
11. The opposite parties were deficient in provision of their services and also negligent on account of their failure to correctly diagnose the problem of the complainant.
12. That the cause of action qua the opposite parties first arose on March, 2018 when the complainant contacted the opposite parties on their assurances of having facilities for conducting the said tests and further assuring the complainant about the expertise in conducting the test. The cause of action further arose when the complainant had to undergo for the tests from Mahajan Imaging Centre. The cause of action further arose on in April 2018 when the legal notice is served upon the opposite parties. The cause of action further arose when the opposite party no.4 confirmed the receipt of the legal notice and sending of the reply though no reply had been received. The cause of

action qua the opposite parties further arose when the opposite parties negligently and unethically failed to advise the complainant about their lapse. That the cause of action is continuing one and is subsisting.

13. It is submitted that complaint is filed between the period of limitation from the cause of action as prescribed under Section 24A of the Consumer Protection Act, 1986.
14. That this Hon'ble Forum has jurisdiction to decide the instant complaint as the cause of action arose within the jurisdiction of this Hon'ble Forum.
15. It is most respectfully submitted that from a bare reading of the facts of the case as mentioned herein above, it would be evidently clear from the opposite parties are negligent and careless in discharging its duties to the complainant at each and every stage, their acts and omissions and commissions have resulted in the ultimate unjustified loss and trauma to the complainant. Hence, this is a fit case to be entertained and decided by this Hon'ble Forum.
16. The complainant further prays to add and alter the grounds with regard to the gross negligence on the part of the opposite parties for medical negligence on the part of the opposite parties by misdiagnosis in providing test and its report, as well as enhance the claim of compensation and add other relevant and pertinent information that might come to light during the course of proceedings.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Forum/Commission may kindly be pleased to:

1. Pass an order directing that the Opposite parties no.1 to opposite party no.4 are liable for medical negligence(personally and vicariously) and that the services provided by the Opposite Parties were deficient

2. In consequences of the above, pass an order directing that the Opposite Parties are jointly and severally liable to pay to the complainant an amount of Rs. 2,76,500/-(Rupees Two Lakh Fifty seventy six Thousand Five Hundred Only) for the following wrong in the following manner:-

- a) For charging an amount of Rs. 60,500/- for conducting PET/ MRI test and providing incorrect report
- b) For the mental trauma and agony suffered by the complainant and by not responding to the grievance of the complainant during the notice period and by taking a false plea that reply to the legal notice has been sent to the Complainant where as it was not so an amount of Rs. 1,80,000/-
- c) Towards notice charge of Rs. 11,000/-
- d) Litigation cost of Rs.50,000/-
- e) Pass any other order in favour of the Complainant or against the Opposite Parties which this Hon'ble Commission may deem fit in the interest of justice.

COMPLAINANT

THROUGH

RAKESH MALHOTRA
ADVOCATE
TRITENT LEGAL LAW FIRM
OFF: 3438/3, VISHNU MANDIR
MARG KAROL BAGH, NEW DELHI

DATE : 30.07.2018
PLACE : KRAKOW, POLAND