

Date of Filing: 28-10-2013
Date of Order: 22-01-2020

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM – II,
 HYDERABAD**

P r e s e n t

SRI VAKKANTI NARASIMHA RAO B.A., B.L.,	PRESIDENT
SRI P.V.T.R JAWAHAR BABU, M.A., B.L.,	MEMBER
SMT.R.S.RAJESHREE, B.A., L.L.M.,	MEMBER

Wednesday, the 22nd day of January, 2020

Consumer Case No.2/2014

Between:

1. Sri Narsimha Rao S/o. Sri Waman Rao Deshmukh Aged about 67 years,
Occ: Retd. Employee R/o. Vithal Nagar, Gulbarga.
2. Smt. Vyjayanthimala W/o. Sri Waman Rao Deshmukh Aged about 57
years, Occ: House wife R/o. Vithal Nagar, Gulbarga.

Complainants

And

1. The Medical Administrator Yashoda Hospital, Rajbhavan Road, Somajiguda,
Hyderabad-82
2. Dr. Ranganatham. P Consultant, Yashoda Hospital, Rajbhavan Road,
Somajiguda, Hyderabad-82
3. Dr. Chandrshekar Reddy (Gastro) Yashoda Hospital, Rajbhavan Road,
Somajiguda, Hyderabad-82
4. New India Assurance Company Limited, 2nd Floor, Lal Bunglow, Ameerpet,
Hyderabad. (Vide Policy No.61190036110200000009)
5. New India Assurance Company Limited, 5th Floor, Surya Towers, Sardhar
Patel Road, Secunderabad, (Vide Policy No. 610200/ 36/10/ 34/00000094)

Opposite parties

**This complaint coming before us on this 22nd day of January, 2020
 in the presence of Sri T. Nagi Reddy, Counsel for the Complainant; Sri G.
 Venugopal Rao, Counsel for the Opposite party No. 1 to 3 and Sri Ch.
 Pratap Lingam, Counsel for Opposite party no. 4 and 5 and having stood
 over for consideration till this day and passed the following:**

O R D E R

**(BY SRI VAKKANTI NARASIMHA RAO, HON'BLE PRESIDENT ON BEHALF
 OF THE BENCH)**

This complaint is filed by the complainant under section 12 of Consumer
 protection Act, 1986 with a prayer to direct the opposite parties to:

1. Pay compensation of Rs.19, 70,000/-.
3. Award costs.

4. Pass any such other order or orders as this Hon'ble Forum may deem fit and proper in the circumstance of the case.

BRIEF FACTS OF THE COMPLAINT:-

This complaint is filed for gross Medical negligence on the part of opposite party Nos. 1 to 3 in treating Miss Suchitha which caused her death. The deceased is the daughter of complainants. The deceased Suchitha is the only daughter to the complainants having completed her graduation in B.E (E&C) with distinction and had a bright future and good career. She was only 28 years when she took her last breath. That late Suchitha was physically challenged Girl and was suffering from "Neurofibromatosis" since her birth. Off later she developed "Dysphasia/Belching" problem from couple of years and she was under local treatment from Dr. Ramakanth Kulkarni. But in the mid March 2011, the said problem "Dysphasia/Belching" increased for which she approached Dr. Ramakanth Kulkarni and availed initial treatment, thereafter the said doctor referred the patient to Yashoda Hospital, Hyderabad for further treatment.

They have visited Yashoda Hospital, Hyderabad on 05-04-2011 and got enrolled as outpatient in ID No.296653. The patient was referred to Dr Ranganadam P for treatment. Dr Ranganadam P examined the patient Suchitha clinically at 08:30 PM and advised for Blood test, CT scan of neck, and upper GI endoscopy test for investigation and further treatment. The blood sample collected immediately and sent to test of creatinine report. On the next day the patient had availed herself for CT scan test at about 9:40AM.

The findings of the Radiologist was that there is a delicate condition of the deformity of the neck as at that time vis-à-vis the position and displacement of trachea (wind pipe) and esophagus (food pipe) on the account of Neurofibromatosis. By this radiologist report it was clear that

the trachea (wind pipe) and esophagus (food pipe) were dislocated and were not in place. Dr. Ranganadam P without considering the findings of radiologist report and not applying his mind casually directed the patient for endoscopy test. So also Dr. Chandrashekar Reddy without verifying the report and not taking note of condition of patient conducted endoscopy which lead to the serious consequences. The endoscopy test is a method of introducing of pipe consisting of camera is put into stomach through esophagus (Food Pipe) to diagnose the decease.

Perusing the report of radiologist and the condition of patient the complainant and their daughter were not in favour of endoscopy test, as they were aware that this test may cause damage to “Trachea” (Wind pipe) and “Esophagus” (Food pipe) which leads to serious consequences so that they pleaded doctors to avoid this test and other non-invasive/non-intrusive test if any may be explored. But the doctors were bent upon to conduct the above said test submitting that it will help to come to true cause and also to know the root cause of the disease.

The complainants and their daughter against their will, and under the pressure were constrained to appear for endoscopy test. But the complainants respectfully submit that as they anticipated while negotiating of endoscopy pipe in the Esophagus (Food Pipe) the mishap happened and Suchita became unconscious which was lead to apply the ventilator support. Their daughter not satisfied with the treatment and its high cost and got discharged on 08-04-2011 and admitted at Vatsalya Hospital R.T.O. office, Gulbarga, but the patient could not survive for long hours and took her last breath 09-04-2011.

The complainants submit that their daughter Miss. Suchita had a Belching (Noisy return of Air from the stomach through mouth) problem and

she visited hospital by walking as an outpatient but left the Hospital on stretcher with ventilator support. This was caused due to Negligence of Doctor by subjecting the patient to endoscopy test. The incident caused due to carelessness and negligent act of doctors which resulted for death of their loving daughter. The complainants visited the hospital of opposite party with a great hope that their daughter would get good treatment and discharge with good health. But without ascertaining the health condition and without verifying the CT scan report of patient, the doctor negligently advised for endoscopy test. If doctors would have verified radiologist report and its findings, which was clearly mentioned that the Trachea (wind pipe) and Esophagus (food pipe) were dislocated. The doctors should have applied their mind and avoided the test. It is prudent to avoid such test and leave the patient in the existing condition only rather than cause fatality in the name of treatment.

Due to loss of their loving daughter the complainants suffered severe mental agony and pain which cannot be reimbursed but it can only be compensated in monetary value to some extent. Therefore, the complainants claimed Rs.19, 00,000/- as a compensation and Rs.50, 000/- towards medicine and Rs.20, 000/- towards funeral expenses.

That the complainants on realizing gross negligence of opposite parties' No. 1 to 3 issued legal notice on 12-02-2013 and claimed damages which was served but they did not heed to the complainants legal notice. So the complainants had issued the request letter to opposite parties No. 1 to 3 on 23-03-2013 to provide all the medical records of the deceased but they had given evasive reply. Hence the complainants have no other option except to approach this Forum for the negligence and loss caused to them.

Initially the complaint was filed by the complainants against the opposite parties No. 1 to 3. It is matter of fact that the opposite party filed their written version stating that opposite party No.1 have been insured with the opposite party No.4 i.e., New India assurance company limited, 2nd floor, Labunglow, Ameerpet, Hyderabad, vide policy No.61190036110200000009 and opposite party No.3 have been insured with opposite party No.5 i.e., New India assurance company limited, 5th floor Surya Towers, Sardhar patel road, Secunderabad, vide policy No.610200/36/10/34/00000094. The said policies were valid from 01-04-2011 to 31-03-2012. Opposite parties No. 4 and 5 are also liable to the negligent acts of the opposite parties No. 1 to 3. As such the insurance companies are made proper and necessary parties in present complaint.

In these circumstances the insurance companies are impleaded as opposite parties' No. 4 and 5 for proper adjudication. The complainants had no knowledge about the opposite parties No. 1 and 3 were insured with the opposite parties No. 4 and 5 as such they have not made them as opposite parties earlier in the case.

VERSION OF OPP. PARTIES No. 1 TO 3:

The Opposite parties herein state that Miss Suchitha was suffering from severe form of Neurofibromatosis with severe narrowing of Esophagus (food pipe) and Trachea (wind pipe) and hence the claim of the complainants that the patient was suffering only with Belching is not correct (Belching is A normal process of releasing through the mouth air that accumulates in the stomach, thereby relieving distention. Upper abdominal discomfort associated with excessive swallowed air may extend into the lower chest, producing symptoms that suggest heart or lung disease).

When the patient came to the opposite party hospital, she was suffering from severe Dysphagia (unable to swallow food). When she came to the hospital as an outpatient, she was unable to swallow even small quantities of food and if she was to continue like that, she would have landed in severe malnutrition status. Having regard to the condition of the patient, the doctors of the hospital advised for CT scan of neck and thereafter in view of CT scan, all the findings were discussed with the radiologist.

Since there was no other test which can clearly delineate the problem, made the patient to undergo Endoscopy which was only the option left.

The opposite parties herein state that they have explained the pros & cons of the Endoscopy to the patient as well as to the parents of the patient and also clearly informed and explained to them about the alternate tests and their disadvantages. The attendants of the patient and the patient have given written consent only after understanding and accepting the procedure of Endoscopy to be conducted on the patient by the opposite parties.

Only after the written consent, the doctors of the opposite party had conducted the endoscopy on the patient. In fact, the advantage of endoscopy in such patients was that the doctors could see the Esophagus (food pipe) and if needed the doctors could put ryles tube (feeding pipe) and if needed they could put PEG tube (feeding tube) in the food pipe, through which food could be given to the patient, so that the patient could be effectively treated for her malnutrition with this method. The opposite party doctors state that some of the conditions like achalasia cardia (is a failure of organized esophageal peristalsis causing impaired relaxation of the lower esophageal sphincter, and resulting in food stasis and often marked dilatation of the esophagus) can

cause dysphagia (unable to swallow food) which are associated with this condition and can be diagnosed only with endoscopy.

The Opposite parties herein state that during the Endoscopic procedure, the doctors have taken utmost care in view of the critical condition of the patient. One anesthesiologist was also present during the endoscopy procedure and has taken utmost precaution and proper care, anticipating problems during the Endoscopy. The allegation of the complainant that there was evidence of tracheal injury is absolutely false and not true. In fact if tracheal injury was to be there, it would have caused immediate fatality.

The doctors of the opposite party state that till now no case has been reported in the medical literature that endoscopy causes tracheal injury. Post procedure, the patient developed hypoxia (reduced oxygenation) because of severe Tracheal stenosis and immediately the patient was intubated and oxygen was given. During the post procedure period and during the stay in the hospital the Opposite parties have taken utmost care of the patient and the patient showed signs of improvement. On the next day the patient was taken off the ventilator and put on oxygen therapy. In spite of improvement in the health condition of the patient the attendants of the patient wanted to take the patient to their native place at their own risk even after the advice by the doctors not to move the patient. Thus in spite of repeated efforts by the opposite party doctors to convince the attendants of the patient regarding the continuation of treatment and the risks involved in shifting the patient, the attendants of the patient did not listen to the advice of the opposite party doctors. They have shifted the patient much against the medical advice of the doctors. If the patient was to continue in the hospital of the opposite party and continued the treatment, she could have improved her health condition and could have survived in fact. The parents of the patient have given in writing stating as Left against Medical Advice, while leaving the hospital. Thus, the

death of the patient was due to the acts of the Complainants i.e., (parents of the patient who were the attendants of the patient at that time) but not due to the negligence on the part of the opposite parties.

The opposite parties herein state that after the endoscopy, on 06-04-2011 at about 01.00PM the patient developed cardiac arrest and was resuscitated immediately. The patient developed seizures (convulsions) secondary to hypoxia of brain by 05:20PM on 06-04-2011. The patient recovered well, was conscious and followed the commands even on 07-04-2011, endotracheal tube (is a flexible plastic tube that is placed through the mouth into the trachea (windpipe) to help a patient breath) was charged at 05:30PM on 08-04-2011 and the patient continued to be conscious and following commands. As set out above, the attendants wanted the patient to be discharged against medical advice.

The doctors of the opposite party have done the endoscopy procedure with great care after taking the written consent from the attendants of the patient, having no other alternative and in the best interest of the patient. The opposite parties had taken all precautions and an anesthesiologist was kept in the endoscopy room which is not done usually. Even during the endoscopy procedure, the anesthesiologist closely monitored the condition of the patient and when she developed hypoxia post procedure immediately the doctors reacted and intubated the patient for oxygenation. So, there is absolutely no negligence on the part of the opposite parties and the endoscopy had to be done in the interest of the health of the patient. Hence for the reasons set out above the opposite parties herein are not liable to pay any amount much less of Rs.19,70,000/- as there is no negligence or deficiency of service on part of the opposite parties. For the reasons stated the opposite parties herein pray to dismiss the complaint and pass such other orders or order by this Hon'ble

Forum as deems fit and proper in the circumstances of the case and in the interest of justice.

VERSION OF OPP. PARTIES No. 4 and 5:

Without prejudice to the pleas hereafter set out this Respondent no.4 & 5 submits the following written version.

The complaint filed by the complainants to allow the complaint and direct the opposite parties to pay a total amount of Rs. 19,70,000/-towards compensation, medicines, funeral expenses and any other relief is neither maintainable in law nor on facts as such the complaint is liable to be dismissed in limini.

The Respondent no. 4&5 deny the entire material allegations made in the complaint except those that are specifically admitted herein.

In respect of alleged negligence of opposite parties in treating the patient, it is submitted that, this respondent company hereby denies the said allegations. However, the complainants are put to strict proof of the same. This opposite parties are not aware about the said treatment, etc., as narrated therein and the said averments are hereby denied. The complainants are put to strict proof of the same.

The complainants filed the complaint against opposite parties 1 to 3 herein alleging medical negligence and there is no privity of contract between complainants and the opposite parties 4 & 5 herein. Hence it is submitted, the respondents 4 & 5 herein are not a necessary party, no deficiency can be attributed and the complaint is liable to be dismissed insofar as the respondents 4 & 5 are concerned.

It is true that the Divisional Office of this respondent insurance company (opp. Party 4) issued Professional Indemnity Insurance (Medical Establishment) policy bearing no. 61190036110200000009 in favour of M/s. Yashoda Super Speciality Hospitals covering their Business Premises at Rajbhavan Road, Somajiguda, Hyderabad for the period 01.4.2011 to 31.3.2012.

The Divisional Office of this respondent insurance company (opp. Party 5) issued Professional Indemnity Insurance (Doctor) policy bearing no. 61020036103400000094 in favour of Dr. D. Chandrasekhar Reddy for the period 26.11.2010 to 25.11.2011. It is submitted, the policy was issued by our Divisional Office at 9th Floor, Parishram Bhavan, Basheerbagh, Hyderabad, and not as stated in the complaint.

It is submitted, mere issuance of the said policy (hospital or doctor) does not bestow automatic liability on the insurance company and the policy (hospital or doctor) was issued subject to conditions, exclusions, indemnity limits, compulsory excess, if any, contribution, etc. as are applicable under the policy. It is submitted, the policy so issued is a contract between the insurance company and the hospital or doctor, as the case may be, who is bound to adhere to the terms & conditions, and fulfillment of the policy terms and conditions as are envisaged, is a condition precedent to any liability that may arise under the policy.

It is submitted, without prejudice to our above submissions, the said policy is a pure indemnity/reimbursement policy whereby in the event of any negligence being established against the opposite party (hospital or doctor) and liability being fastened against the said hospital or doctor, this policy only reimburses subject to terms, conditions, exclusions, exceptions, compulsory excess, if any and indemnity limits as stipulated, after taking into account the

previous payments/claims, if any, made under the policy. The policy does not provide for reimbursement for liability arising out of acts committed by the hospital prior to retroactive date mentioned in the policy.

It is submitted, the said policy is subject to the following conditions which are common under both the policies but only the serial no. changes viz. Condition No.10 under policy at Para 6 above, Condition No.8 under policy at Para 7 above.

- a) 10.1 / 8.1. "The insured shall give written notice to the company as soon as reasonably practicable of any claims made against the insured (or any specific event or circumstances that may give rise to a claim being made against the insured) and which forms the subject of indemnity under this policy and shall give all such additional information as the company may require. Every claim, writ, summons or process and all documents relating to the event shall be forwarded to the company immediately they are received by the insured".
- b) 10.4 / 8.4. "The insured shall give all such information and assistance as the company may reasonably require."
- c) 10.8 / 8.8. "If at the time of happening of any event resulting into a liability under this policy, there be any other liability insurance or insurances effected by the insured or by any other person covering the same liability, then the company shall not be liable to pay or contribute more than its ratable proportion of such liability."

The present complaint was numbered in the year 2014 whereas the opposite parties 1 to 3 herein have not intimated this to the opposite parties insurance company about the said complaint and also did not keep the company informed about the case from time to time as is envisaged under the policy conditions a) and b) above. Hence it is submitted, the opposite parties

Nos. 1 and 3 have violated the policy conditions and therefore this respondent insurance company is not at all liable under the said professional indemnity policies.

The complainants have not paid any consideration to the Opposite Party No. 4 & 5 and there is no privity of contract between complainants and Opposite Party No. 4 & 5. It is further submitted that the complainants are not the consumers of the Opposite Parties No. 4 & 5 as such they could not claim any relief and therefore the Opposite Party No. 4 & 5 are not liable to pay any amount.

In the light of the above submissions, these opposite parties insurance company is not a necessary party inasmuch as the complaint was filed against the opposite parties 1 to 3 herein and there is no contract between the complainant and this opposite parties insurance company. The opposite parties 1 and 3 have violated the policy conditions and therefore this respondent is not liable under the subject policies, and therefore, the complaint is liable to be dismissed in so far as the opposite parties No. 4 & 5 are concerned. Therefore the opp. parties prayed this forum to dismiss the above said complaint in the interest of justice.

Evidence Affidavit of complainant No. 1 filed as Pw. 1 and Ex. A-1 to Ex. A-13 are marked for the complainants.

Evidence affidavit of Dr. Mudili Raghu Anand who is the RMO for the Opp. Party No. 1 as RW1 and Evidence Affidavit of Dr. P. Ranganadham who is consultant Neuro Surgeon of opposite party No. 1 as Rw2 and Evidence Affidavit of Dr. D. Chandra Shekar who is consultant Gastroenterologist of Opp. party no. 1 as RW3 was filed and Ex. B1 and Ex.B2 were marked on their behalf. Evidence Affidavit filed through Subir Talukdar who is General Manager of Opp. parties no. 4 and 5 as RW4 and Ex.B3 and Ex.B4 were marked on their

behalf. Written Arguments filed by the opp. parties. Complainants filed Medical literature on 27.02.2019 in support of their case. Heard oral submission of both parties.

On perusal of material available on record, the following points are to be answered for determination:

1. Whether any negligence is there on the part of the treating Doctors of Opp. Parties No. 1 to 3 while conducting Endoscopy on the deceased daughter of the complainants?
2. Whether the complainants are entitled for the relief sought?
3. To what relief?

Facts which are not in dispute:

1. The deceased daughter of the complainants was physically challenged Girl suffering from severe form of “Neurofibromatosis” since her Birth with severe narrowing of Esophagus (Food Pipe) and Trachea (Wind Pipe).
2. Subsequently she has developed “Dysphasia/ Belching” problem for couple of years. *(Belching is a normal process of releasing through the mouth air that accumulates in the stomach, thereby relieving distention. Upper abdominal discomfort associated with excessive swallowed air may extend into the lower chest, producing symptoms that suggest heart or lung disease).*
3. The deceased daughter of the complainants approached the Opposite Parties No. 1 hospital on 05.04.2011 and consulted Dr. Ranganadham P who is the opposite party No. 2 herein above.
4. The Opposite party No. 2 Referred for investigation of Upper GI Endoscopy, C T Scan of Neck apart from other tests.
5. The complaint of the deceased daughter of the complainants Von-Recklinghausen’s disease with cutaneous manifestations. Weakness of left upper and lower limb Dysphagia (unable to swallow food).

Point No. 1: The main contentions of the complainants are that their loving daughter, who was graduate in B.E. (E & C) with distinction, has been surviving for 28 years being physically challenged. She has been suffering from Neurofibromatosis and died due to the negligent acts of the Opposite parties No. 1 to 3 while conducting the Endoscopy without considering the ingredients and Diagnosis findings under Ex. A-3 Radiology Report.

Documents filed and marked on behalf of the complainants are as follows:

1. Ex. A-1 is the Prescription dated: 05.04.2011 of the deceased daughter of the complainants issued by the Opposite party No. 2 on the Letter Head of the Opposite Party No. 1.
2. Ex. A-2 is the Discharge Summary dated: 08.04.2011 of the deceased daughter of the complainants issued by the Opposite No. 1.
3. Ex. A3 is the Radiologist report dated: 06.04.2011 of the deceased daughter of the complainants belongs to CECT NECK.
4. Ex. A-4 is the Death Certificate dated: 21.06.2011 of the deceased daughter of the complainants.
5. Ex. A-5 is the Legal notice dated: 12.02.2013 issued by the complainant No. 1 to the Opposite parties.
6. Ex. A-6 is the 4 number of Postal Receipts dated: 13.02.2013 and Ex. A-7 are the Acknowledgments.
7. Ex. A-8 is the Notice dated: 23.03.2013 issued and Ex. A-9 is the Postal receipts and Ex. A-10 are the Acknowledgments.
8. Ex. A-11 is the reply dated: 01.04.2013 issued by the Opposite party No. 1 to the legal notice under Ex. A-8.
9. Ex. A-12 is the Photo Print of the deceased daughter of the Complainants accompanying with her mother complainant No. 2.
10. Ex. A-13 is the order dated: 29.05.2013 in CC No. 67 of 2013 passed by the Hon'ble District Consumer Forum, Gulbarga by returning the complaint of the complainants for want of jurisdiction with a liberty to approach proper Forum having jurisdiction.

Documents filed and marked on behalf of the opposite parties are as follows:

1. Ex. B-1 is the Case sheet of Yashoda Hospital.
2. Ex. B-2 is the Insurance policy of the Opposite Party No. 1 for the year 2011-2012.
3. Ex. B3 is the Policy Schedule for professional Insurance (Doctor) of Opposite Party No. 3.
4. Ex. B-4 is the Policy Schedule for Professional Indemnity Insurance (Medical Establishment) of opposite party No. 1.

The doctors of the opposite party state that till now no case has been reported in the medical literature that endoscopy causes tracheal injury. Post procedure, the patient developed hypoxia (reduced oxygenation) because of severe Tracheal stenosis and immediately the patient was intubated and oxygen was given. Tracheal stenosis means narrowing of wind pipe that can occur after radiation therapy, prolonged usage of breathing tube or other procedures. It can be caused by an injury or a Birth defect. But the Opp. Parties No. 1 to 3 failed to explain the reasoning as to why hypoxia is developed and why the opposite parties proceeded with the procedure of Endoscopy as the patient is a known case of Tracheal Stenosis. Admittedly the daughter of the complainants was physically challenged girl in view of Ex. A-12 and as per Ex. A-3 it is very clearly noted under the Impression of CECT Neck (Status Neurofibromatosis) shows:

- Gross cervico-dorsal scoliosis with Secondary structural anatomical changes of trachea & esophagus as noted.
- Left deep cervical region posterior to the carotid vessels shows a well marginated lesion showing minimal enhancement of the central matrix --
- S/o. Neurofibromatosis.

As per the admissions of the Opposite parties development of hypoxia can be caused either by an injury or Birth defect due to Tracheal stenosis. It is an admitted fact that the opposite parties failed to explain why the patient developed hypoxia (reduced oxygenation) and why the severe Tracheal stenosis

has occurred on Post procedure. The Opposite parties No. 1 to 3 are only the proper and competent persons to explain the reasons for occurrence of mishap to the deceased but failed to disprove by production of admissible documentary evidence as held in ***“Municipal Corporation of Delhi Vs. Subhagwanti, AIR 1996 SC 1750 = 1966(3) SCR 649”***. ***“Savita Garg Vs. The Director, National Heart Institute, 2004 CTJ 1009 SC(CP) = AIR 2004 SC 5088 = 2004 (8) SCC 56”***.

It is very clearly established that the Opposite parties No. 1 to 3 failed to consider the Radiology Report under Ex. A-3 prior to commencement of Endoscopy procedure. Nowhere it was noted or proved that on considering the findings of Ex. A-3 Radiologist report only the procedure of Endoscopy is being commensurated.

The physical appearance of the deceased daughter of the complainants itself speaks that she has got physical deformity which it termed as “Belching” legally considered as maxim of “Res-ipsa Loquitor”. Without considering the maxim under the res-ipsa Loquitor the opposite parties No. 1 to 3 has conducted the procedure of Endoscopy very negligently under the pretext of ascertaining the root cause of the decease, it amounts to deficiency in treating the patient and also adoption of unfair trade practice under the factor of corporate treatment.

The opposite parties have not furnished the findings of the Endoscopy procedure to prove the reasons for occurrence of mishap. They are simply denying the commensurate of Tracheal injury but failed to explain the reasons for development of hypoxia (reduced oxygenation). The opposite parties utterly failed to anticipate adverse Pros and Consequences and they conducted the procedure of Endoscopy, without considering the physical appearance i.e. Scoliosis and Belching. Accordingly, we answered this point in favor of the complainants.

Point No. 2:

Due to negligent and ignorant acts of the opposite parties No. 1 to 3, the complainant lost their only loving daughter who completed her graduation in B.E. (E & C) in Distinction having bright future. As such the complainants are entitled for the relief and the opposite parties No. 1 to 3 are held liable for their deficient acts and negligence of services in treating the deceased daughter of the complainants.

As the daughter of the complainants died at the age of 28 years which is starting age of her earnings on completion of graduation in distinction, we are under the considered view that an amount of Rs. 15, 00,000/- is to be payable by the opposite parties No. 1 to 3 towards compensation for their negligent acts.

Point No. 3:

In the result, the complaint is allowed in part, directing the Opposite Parties No. 1 to 3 jointly and severally to:

1. Pay Rs. 15, 00,000/- (Rs. Fifteen Lakhs only) towards compensation for their negligent act of treating the daughter of the complainants which caused her death.
2. Pay Rs. 15,000/- towards costs of the proceedings.
3. It is further directed:
 - (i) The Opposite parties No. 1 and 3 submit their claim with the Opposite party Nos. 4 and 5 in terms of Ex. B-3 and Ex. B-4 and initiate reimbursement proceedings of their claim on completion of 15 days from the date of compliance of the order.
 - (ii) The Opposite Parties No. 4 and 5 shall reimburse the claim of the Opposite parties No. 1 and 3 within 45 days from the date of its submission.
4. Time for compliance is 30 days from the date of receipt of this order; in default interest @ 12% shall be accrued under Item No. 1 from the date of

discharge of the daughter of the complainants i.e. 8.4.2011 till the date of realization.

5. Rest of the claim of the complainants is dismissed.
6. In view of the disposal of the Complaint, the Interlocutory Applications if any is pending with this C.C shall stand closed.

Dictated to typist Typed by her, corrected and pronounced by us in the open Forum to day the 22nd day of January, 2020.

MALE MEMBER

LADY MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

Witnesses examined for complainant

Sri Narasimha Rao (PW1)

Witnesses examined for Opp.parties 1 to 5

Dr.Mudili Raghu Anand (RW1)

Dr.P.Ranganadham (Rw2)

Dr.D.Chandra Shekar (Rw3)

Sri Subir Talukdar (Rw4)

Exhibits marked on behalf of the Complainant: -

Ex. A-1 is the Prescription dated: 05.04.2011 of the deceased daughter of the complainants issued by the Opposite party No. 2 on the Letter Head of the Opposite Party No. 1.

Ex. A-2 is the Discharge Summary dated: 08.04.2011 of the deceased daughter of the complainants issued by the Opposite No. 1.

Ex. A3 is the Radiologist report dated: 06.04.2011 of the deceased daughter of the complainants belongs to CECT NECK.

Ex. A-4 is the Death Certificate dated: 21.06.2011 of the deceased daughter of the complainants.

Ex. A-5 is the Legal notice dated: 12.02.2013 issued by the complainant No. 1 to the Opposite parties.

Ex. A-6 is the 4 number of Postal Receipts dated: 13.02.2013

Ex. A-7 are the Acknowledgments.

Ex. A-8 is the Notice dated: 23.03.2013

Ex. A-9 is the Postal receipts and Ex. A-10 are the Acknowledgments.

Ex. A-11 is the reply dated: 01.04.2013 issued by the Opposite party No. 1 to the legal notice under Ex. A-8.

Ex. A-12 is the Photo Print of the deceased daughter of the Complainants accompanying with her mother complainant No. 2.

Ex. A-13 is the Copy of order in CC No. 67 of 2013 passed by the Hon'ble District Consumer Forum, Gulbarga by returning the complaint of the complainants for want of jurisdiction with a liberty to approach proper Forum having jurisdiction. order dated: 29.05.2013

Exhibits marked on behalf of the Opposite parties 1 to 5:-

Ex. B-1 is the Case sheet of Yashoda Hospital.

Ex. B-2 is the Insurance policy of the Opposite Party No. 1 for the year 2011-2012.

Ex. B3 is the Policy Schedule for professional Insurance (Doctor) of Opposite Party No. 3.

Ex. B-4 is the Policy Schedule for Professional Indemnity Insurance (Medical Establishment) of opposite party No. 1.

MALE MEMBER

LADY MEMBER

PRESIDENT