

(2016) 09 NCDRC CK 0119

In the National Consumer Disputes Redressal Commission

Case No : 696-698 of 2014

KUCKYJOHNEY @KUCKY MERIN PUNNOOSE

APPELLANT

Vs

ADMINISTRATOR, ST. THOMAS HOSPITAL & ORS.

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21(b), Section 21(b) - Jurisdiction of the National Commission - Jurisdiction of the National Commission

Citation : 2016 4 CPR 12

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Krishna Mohan K. Menon, Jogy Scaria, K. N. Madhusoodhanan, Manish Pratap Singh

Final Decision : Petition Allowed

Judgement

1. Challenge in these Revision Petitions under Section 21(b) of the Consumer Protection Act, 1986 (in short, "the Act") is to the common order dated 16.07.2013 passed by the State Consumer Disputes Redressal Commission, Kerala, Thiruvananthapuram, (in short, "the State Commission"), in First Appeal Nos.236/2012, 322/2012 and 476/2012. By the impugned order, the State Commission has allowed the Appeals, set aside the order of the District Consumer Disputes Redressal Forum, Kottayam (in short, "the District Forum") in Consumer Complaint No. 121/2006 and dismissed the Complaint.

2. Since there are three Revision Petitions, the Petitioner herein is referred to as "the Complainant", Dr. Molly Thomas, the Gynecologist, as "the Treating Doctor", the Administrator, St. Thomas Hospital as "the Opposite Party Hospital" and the Divisional Manager , Oriental Insurance Co. Ltd., as "the Insurance Company".

3. The facts material to the case are that on 26.07.2004, the Complainant, met the treating doctor, who advised certain tests to confirm pregnancy and continued to treat her, till her delivery. On 13.03.2005, the Complainant was admitted to the Hospital at about 5.00AM due to fluid leakage and at about

10.00AM, a Caesarean Section was performed and the Complainant gave birth to a baby boy. On 18.03.2005, the Complainant suffered from high fever and it was averred that in spite of informing the treating doctor about the fever and shivering, she was discharged from the Opposite Party Hospital, on 19.03.2005 itself. On 20.03.2005, the fever increased. She approached the treating doctor on 21.03.2005 and informed her about the fever. She was referred to a Physician, who gave her some medicines. However, her condition did not improve. When the fever continued, the Complainant once again consulted the treating doctor, but she was informed that it was a common post-operative problem and that there was nothing to be worried about. Thereafter, the Complainant noticed a yellow discharge, oozing out of the surgical wound and also felt some "hardness", just above the stitches. The Doctor opined that it would take about 3-4 months for the surgical wound to heal and that the hardness was due to contraction of her uterus.

4. It was averred that the Complainant frequently visited the Opposite Party Hospital and consulted the treating doctor, at least thrice a week, but still there was no improvement. While so, on 31.05.2005 the Complainant was informed that her treatment would be "free of charge". Becoming suspicious, the Complainant decided to go to Christian Medical College (hereinafter referred to as "CMC") Hospital, Vellore, for further treatment. On 25.06.2005, the Complainant's problem was diagnosed as "post-LSCS" abdominal wall sinuses due to Atypical Mycobacterial infection and an emergency surgery was advised which was done on 28.06.2005. During the surgery, the Doctors noticed that there were multiple discharging sinuses in the operated site and granulation tissue extending to the peritoneum and that the lower peritoneum and omentum that was close to the scar were studded with pink nodules denoting severe inflammation. After the necessary investigations, the Doctors at CMC Hospital found that the infection was caused due to micro-bacterium Fortutium.

5. After the surgery, the Complainant had to remain at CMC Hospital, for about a month and was finally discharged on 26.07.2005. She was treated for an additional ten days as the wound had to be dressed every day. She was further advised to continue the dressing of the wound every day for six months. Antibiotic injections and tablets were prescribed. Thereafter, the Complainant continued with the prescribed treatment at Kottayam and visited the Kottayam Hospital, every day, for a period of six months, spending 600/- per day, towards dressing charges, tablets and transportation. The Complainant was advised to use "clarithromycin" and also had to get her creatinine levels tested, at regular intervals.

6. As the surgical wound still did not heal, a second surgery was performed on 09.12.2005 at CMC Hospital, Vellore and she was discharged on 15.12.2005. The Complainant pleaded that the root cause of the post-operative trauma is only due to micro-bacterium infection which had occurred during the Caesarean Section that was performed by the treating doctor at the first Opposite Party

Hospital. It was reliably learnt by the Complainant that many of the patients who underwent surgery, sustained this micro-bacterium infection which was certified by a surgeon - Dr. Tomi Mathew, who had worked in the first Opposite Party Hospital. Despite several consultations, the treating doctor could not detect the cause of the pain and did not conduct the necessary pathological investigations to diagnose the cause of the yellow discharge and the continuous fever. This had put the Complainant's life in peril necessitating the two unwanted surgeries in quick succession. It was pleaded that the Complainant was deprived of breast-feeding her new-born baby and could not render proper care to her child because of her health condition. The Complainant was working as a Receptionist at a Private Firm and was earning 3,000/- p.m., but was unable to attend to her duties and sought the following reliefs :- STATEMENT OF COMPENSATION

I. ACTUAL DAMAGES

i) Medical Expenses at first Opposite Party's hospital 11,486/-

ii) Expenses incurred at Vellore

a) Amount paid at CMC Hospital, Vellore 96,871/-

b) Annex Rent at CMC Vellore (39 days x 200) 7,800/-

c) Hotel rent (3 days x 500/-) 1,500/-

d) Travelling expenses 40,000/-

e) Food expenses of relatives including - Husband, parents and child (41 days x 600) 24,600/-

TOTAL 1,70,771/-

iii) Expenses incurred for the treatment at Mandiram Hospital Kottayam 96,010/

TOTAL ACTUAL DAMAGES 2,78,267/-

II. GENERAL DAMAGES

1) Pain and suffering 10,00,000/-

2) Loss of amenities of life 2,00,000/-

3) Loss of expectation of life 1,00,000/-

4) Loss arising from disability 1,00,000/-

5) Loss caused to the child 2,00,000/-

6) Loss of income to the husband 11,000/-

7) Mental agony to the husband and parents 50,000/-

8) Loss of earnings from 13.06.2005 to 13.07.2006 39,000/-

TOTAL GENERAL DAMAGES 17,00,000/-

TOTAL DAMAGES CLAIMED 19,78,267/-

7. The first Opposite Party Hospital filed its Written Version admitting that the Caesarean Section was performed on the Complainant on 13.03.2005, but denied that the Complainant had high fever on 18.03.2005 and pleaded that the temperature was only 99° F on 18.03.2005 which was common in a post-operative patient. The Complainant was discharged on 19.03.2005, on which date, the Complainant had temperature ranging from 98.6° F to 98.8° F. It was averred that the Complainant had never visited the Gynecologist on 21.03.2005; that she had never mentioned the number of days she had suffered from fever; had visited the treating doctor only on 28.04.2005, i.e., on the 47 th day, post-Cesarean Section; that the bill dated 21.03.2005 is by Dr. Sanju, the Pediatrician, who had seen the Complainant's child and that the Complaint is bad for non-joinder of the said doctor. It was also denied that the Complainant had visited the Hospital on 13.05.2005, in a critical condition. It was stated that the treatment alleged to have been given to the Complainant at CMC, Vellore, was not in their knowledge.

8. It was pleaded that post-surgical infections occur, immediately after surgery and not after 2-3 months and that if the Complainant had any Complaint after the surgery, she ought to have come to the first Opposite Party Hospital and taken treatment from the Doctors, which she had failed to do. It was denied that the Complainant had sustained Mycobacterium infection during the Caesarian Section. It was stated that the first Opposite Party Hospital maintained the entire Hospital, its operation theatres, its surroundings and surgical equipments neatly and hygienically. It was admitted that one or two patients in 2005 were infected by Mycobacterium Avium Complex which was a rare infection caused by reaction to suture material and might have been caused in spite of the best precaution and due care. Had the Complainant reported the matter and visited the Doctors at regular intervals, she could have also been treated for infection, if any. All the expenses said to have been incurred by the Complainant are denied. It was stated that the Opposite Party Hospital was not responsible for any wrong diagnosis or wrong treatment and, therefore, no negligence can be attributed to the first Opposite Party Hospital or its doctors.

9. The treating doctor filed her Written Version stating that the patient had first consulted her on 26.07.2004; had regular ante-natal check-ups from 26.07.2004 onwards; was admitted on 13.03.2005 with Complaint of vaginal leakage; Cesarean Section was performed on 13.03.2005 after taking consent and a healthy male baby weighing 2.65 kg was born. It was stated that the Complainant had never complained of high fever, immediately after the operation and that, at the time of discharge, on 19.03.2005, the temperature was ranging between 98.6° F to 98.8° F, which was the usual manifestation, commonly seen in any post-operative period. It was denied that the Complainant had subsequently approached her with continuous fever. It was only on 28.04.2005, i.e., on the 47 th day of LSCS that the Complainant had approached her with

minimal oozing from the wound site. Betadine, the standard medicine for external application was prescribed and the patient did not turn up again, for consultation. It was averred that she could not make detailed investigations to trace out the cause of oozing, as the patient herself had "voluntarily abandoned" further treatment, after 28.04.2005.

10. It was admitted in the Written Version that a few isolated cases of wound infection were noticed during the period from December, 2004 to March, 2005. These cases were diagnosed as reaction to suture material and were treated with antibiotics and regular dressings. All the patients were completely cured by standard and proper treatment given by her. It was denied that she was informed of the hard area, immediately after the surgery and stated that the patient had come only for one post-operative review, on 28.04.2005. On 13.05.2005, the patient had consulted the physician, Dr. Antony George for complaint of cold for which she was prescribed medicines. It was stated that all necessary care and caution in conducting the operation, was taken and that the infection was not caused due to any act or omission on her part.

11. Based on the evidence adduced, i.e., Ex. A-I to A-VIII which are medical bills and the treatment record of CMC, Vellore, and Ex. B-I to B-II, filed by the Opposite Parties, the District Forum held the first Opposite Party Hospital and the treating doctor to be negligent in the treatment rendered to the Complainant and awarded a sum of 7,00,000/- as compensation, out of which, the liability of paying 5,00,000/- was fastened on the third Opposite Party, i.e., the insurance company and the balance amount of 2,00,000/- was directed to be paid by the Hospital and the treating doctor. Default interest @ 9% p.a., from the date of filing of the complaint, till the date of realization, was also awarded.

12. The District Forum, while giving a finding of medical negligence, has observed, as follows :- "According to the opposite party the petitioner had sought discharge from hospital at her request. In Ext. A6 organism is Mycobacterian Avium Complex and the case of the petitioner is that she had got infection by myco bacterian fortutium. So, counsel for the opposite party argued that if the case of the petitioner that she had sustained infection from first opposite party hospital she ought to have infected by the organism as stated in the Ext. A6 certificate. So, the source of infection alleged to have been caused was external sources after her discharge. First opposite party further argued that petitioner had never visited the hospital after her discharge on 28.4.2005 other than on 13.5.2005. In Ext. A6 document the surgeon of first opposite party hospital certified that some patients presented to the hospital with surgical sight infection 3/4 weeks after discharge. So, in our view, the discharge in the complication may also ought to have been noticed after 4 weeks. Petitioner's definite case is that after the discharge from the hospital, petitioner consulted the second opposite party. Ext. A2 is the bill issued from the first opposite party hospital on 21.3.2005. So, from Ext. A2 it can be presumed that petitioner visited the hospital on 21.3.2005. From Ext. A2 bill it can be seen that petitioner

purchased a medicine "OFLIN 200 Mg." from first opposite party hospital. DW2 admitted in her cross examination that it is an antibiotic used for the treatment of urinary-track infection. Ext. B1 is the treatment records of the baby of the petitioner. We cannot assume that no such medicine is possible to be prescribed to one day old child. Probability that can be inferred is that petitioner visited 2 nd opposite party in 1 st opposite party hospital on 21.3.2005. Petitioner has a specific case that she regularly visited the second opposite party with complaints of fever, yellow discharge and pain and the 2 nd opposite party advised - simply dress, applied with the betadine. Petitioner stated that most of the time she had seen the second opposite party without registering in the O.P. Department. It is come out in evidence that DW2 is residing in the hospital quarters. As per the admitted case there were few insistence of surgical site infection by a typical myco-bacteria but opposite party has not produced any treatment records of those patients whom they treated successfully. So, the inference that the case of the petitioner that opposite party purposefully avoided registration is much probable. Opposite party has another contention that petitioner has not impleaded the head of the para medical staff and the physician and the other physician who treated the petitioner. In our view, since the hospital is made a party, even though there is any negligence on the part of para medical staff, hospital is vicariously liable. In our view, from the available evidence, it can be seen that opposite party has not performed the duties with reasonable care and caution".

13. Aggrieved by the said order, the treating doctor, the Opposite Party Hospital and the Insurance Company preferred Appeal Nos. 236/2012, 322/2012 and 476/2012, respectively, before the State Commission. The State Commission allowed the appeals, set aside the order of the District Forum and dismissed the Complaint, observing as follows :- " Though the allegation is that the complaint underwent two surgeries subsequently at the CMC Hospital, Vellore, the evidence indicates that what was done was wide local excision of the affected site, wound debridement etc. It is also a fact that even after the infected bacterium was identified it took a long time to control the infection. That shows that the complainants own body condition had failed to contain the infection satisfactorily. There is no circumstance to indicate that had the complaint been reported the 1 st and 2 nd opposite parties they would have desisted from treating the complainant in an appropriate manner. What is expected from a doctor is not the standard of treatment which is the highest or the lowest, but of reasonable standards. It appears that the 2 nd opposite party was reasonably competent in the Department of Gynecology. There is no allegation against her in this regard. It is also settled law that a doctor is not an insurer and he cannot assure a particular result. The evidence as a whole indicates that the 2 nd opposite party had shown reasonable expertise in treating the patient till the point of time she was discharged. There is no convincing evidence regarding the unhygienic condition of the hospital. The forum assumed otherwise without any supporting evidence. In the above circumstances the finding of the Forum that there was

deficiency of service on the part of opposite parties 1 and 2 cannot be sustained. It follows that these appeals are liable to be allowed. The complainant is not entitled to any relief".

14. Dissatisfied with the said order, the Complainant preferred these Revision Petitions.

15. The learned counsel for the Complainant submitted that the State Commission had overlooked the fact that the Complainant had contracted Mycobacterium Fortuitum infection in the exact area where Cesarean (LSCS) procedure was carried out; that Dr.Tomi Mathew, a Resident Surgeon, had certified that, during the period, December, 2004 to March, 2005, several patients were infected by "myco-bacterial" infection; that the report of the Expert Witness, Dr. Aravindan Nair, indicated that when the patient reports with a non-healing sinus or discharge at the site of the surgery, the specimen ought to be tested by re-opening the wound, conducting the wound debridement or corrective surgery; that when the patient had visited the treating doctor on 28.05.2005, she had only prescribed "Betadine", a disinfectant and had never asked the Complainant to come for a review. The learned counsel further contended that both "myco-bacterium Fortium" and "Mycobacterium Avium Complex", belong to the same class of infection, but the State Commission regarded them as "different" bacterial strains and had come to an arbitrary conclusion.

16. The learned counsel representing the treating doctor and also the Opposite Party Hospital submitted that the patient had never visited the treating doctor after the procedure, except on 28.04.2005 and thereafter also, never came for a review, thereby did not give an opportunity to the treating doctor to diagnose the infection, if any, and to treat the patient, accordingly; that the Certificate of Dr. Tomi Mathew cannot be relied upon as he is well-known to the Complainant herself; that there is a six-month gap between the Cesarean Section and the subsequent surgeries which the Complainant had undergone at CMC, Vellore; that there is no evidence that the Complainant had contracted the said infection from the Hospital, on account of lack of hygiene or on account of any act of omission on the part of the treating doctor.

17. The brief points that fall for consideration are : a) Whether the Mycobacterial infection was contracted post-cesarean section in the first Opposite Party Hospital and whether, the treating doctor ought to have diagnosed Mycobacterial infection when the Complainant had admittedly visited her on 28.04.2005, with oozing from the wound site, specially in the light of the admitted history of Mycobacterial infection during the period December, 2004 to March, 2005 ?.

b) Whether, the surgeries undergone by the Complainant on 27.06.2005 and on 07.12.2005 at CMC, Vellore, were on account of the infection, contracted by the patient, in the first Opposite Party Hospital?

18. The Hon"ble Apex Court, in Laxman Balakrishna Joshi v. Trimbak Bapu

Godbole & Anr., 1969 (1) SCR 206 , has held, as under : "The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law require".

19. Hence, the question of medical negligence has to be examined on the above lines, i.e., "whether, the treating doctor had adhered to the normal standards of medical practice while treating the complainant, or not?".

20. The facts not in dispute are that the Complainant had approached the first Opposite Party Hospital on 26.07.2004 and had undergone all pre-natal check-ups, thereafter, on 13.03.2005, a Cesarean Section was performed; that on the date of discharge, the patient had fever which is stated by the treating doctor to be a common phenomenon, post-surgery; that the patient had visited the treating doctor, on 28.04.2005 with oozing from the wound site and that Betadine ointment was prescribed. It is the Complainant's case that she had informed the treating doctor about the continuous fever and had even visited her on 21.03.2005 when she was prescribed "Oflin - 200 mg and Ivizylac", which were purchased by her on the same date, evidenced in Ex.A-2 - bill dated 21.03.2005.

21. In the 5 th Edition of Disinfection, Sterilization and Preservation, Edited by Seymour S. Block, Chapter 46, dealing with Epidemiology and Prevention of Nosocomial Infections, by Ronda L. Sinkowitz - Cochran and William R. Jarvis, it is stated that "Nosocomial infections are infections that develop during hospitalization and are neither present nor incubating at the time of the patient's admission. Most nosocomial infections become clinically apparent during hospitalization; however, infections with prolonged incubation periods, those with long latency periods, including many surgical site infections (SSIs), those occurring in patients with short hospital admissions (e.g., nursery and obstetric patients), or those resulting from exposures in the outpatient department (e.g., day surgery) may become apparent after hospital discharge".

22. The Complainant filed medical literature, namely, copy of Sabiston Text Book of Surgery, The Biological Basis of Modern Surgical Practice, Vol. I, 18 th Edition, written by Dr. Courtney M. Townsend, Dr. R. Daniel Beauchamp, Dr. B. Mark Evers and Dr. Kenneth L. Mattox. Chapter XIV dealing with Surgical Infections and Choice of Antibiotics, states that " Surgical Site Infections (SSIs) are infections present in any location along the surgical tract after a surgical

procedure. In 1992 the Surgical Wound Infection Task Force published a new set of definitions for wound infections that included changing the term to SSI. Understanding the microbiology of SSIs is important to guide initial empirical therapy for infections in a specific patient, as well as for identification of outbreaks and selection of strategies for its management ".

23. The same Chapter further states that " Treatment of SSI follows standard principles of management for all surgical infections, as explained later. In general, the mainstay of treatment is source control or draining of the infected area. For a superficial SSI, this involves opening the wound at the skin and subcutaneous levels and cleansing the wound, along with dressing changes twice or three times a day. Occasionally, sharp debridement to allow healing of the open wound is necessary. Once the wound infection has been controlled, wound-suctioning devices can also be used to minimize the discomfort from more frequent dressing changes and possibly to accelerate wound healing. For organ / procedure-related SSI, source control can generally be achieved with percutaneous drainage. It is imperative to ensure that the infection is well controlled with percutaneous drainage; if it involves a more diffuse area of a human cavity (i.e., diffuse peritonitis, mediastinitis), surgical drainage is encouraged and would include repair of any anatomic cause of infection (e.g., anastomotic leak) if present".

24. The prescription dated 28.04.2005 clearly states that there was oozing from the wound site and that "Betadine" ointment was prescribed. In Para Nos. 5 & 11 of the Written Version, the treating doctor had admitted as follows :- " 5. It is admitted that a few isolated cases of wound infection were noticed during the period from December, 2004 to March 2005 and in the reported cases, patients were presented with small suture line abscess or with subcutaneous nodules away from incision site. In all the reported cases, except the case of the Complainant, the patients duly reviewed in the First Opposite Party Hospital and followed treatment advice properly. Initially, the cases were treated as reaction to suture material. Patients responded to treatment with antibiotics, dressings and incision and drainable (I&D). A detailed evaluation including biopsy of the sinus wall, PCR study, culture & sensitivity were required in patients who did not respond to initial methods of management. All the patients were completely cured by standard and proper treatment given by me and other doctors attached to the hospital.

11. For diagnosing Atypical Mycobacterium, PCR study and Culture and Sensitivity (C & S) are required. PCR study result required 3 to 5 days to get and if it is positive it needs C&S. Mycobacterium culture takes 3 to 4 weeks to get its result.....".

25. When it is an admitted fact that for diagnosis of Atypical Mycobacterium infection, 3-5 days is required for culture sensitivity and for results of mycobacterium culture, it takes 3-4 weeks, no substantial reasons were given as to why the treating doctor did not prescribe the culture and sensitivity tests

along with other necessary investigations, as prescribed in the afore-noted medical literature, when the Complainant had visited her in the seventh week, i.e., after 47 days, with oozing from the wound site, specially in the light of the history of such infections during that period in the same hospital. The prescription does not anywhere state that such precautions were taken, neither does it show that the patient was advised to come for any review. It is the treating doctor's own case that the noting dated 13.05.2005 on the prescription was made by the Physician, whom the Complainant had visited with the Complaint of cold. Therefore, it cannot be stated that she was asked to come for a review, even as on 13.05.2005. Hence, the fact remains that the treating doctor did not advise any investigations, nor diagnosed it to be a bacterial infection, nor asked the Complainant to come for a review. In this background, to state that the Complainant had "voluntarily abandoned" treatment, after 28.04.2005, is unsustainable.

26. Keeping in view the submissions of the learned counsel for the treating doctor and the hospital, even if the certificate of Dr.Tomi Mathew is not taken into consideration, the evidence of Dr. Aravindan Nair, who gave his Expert opinion, is sufficient enough to conclude that the infection was caused only because of the said surgical procedure. The Respondents failed to rebut this expert opinion by way of any other additional evidence. In his affidavit, the Expert, who is the Head of the Department of Surgery, CMC, Vellore, stated as follows :- " Records produced by the witness marked as Ex.X1. Patient had a post-surgical scar with discharging sinus that was not healing. Whenever, there is a non-healing wound and discharging sinuses, we suspect wound infection and one of the organism, we find is atypical mycobacteria. Non-healing sinuses are due to foreign body suture material or infection. The organism was identified as mycobacterium fortuitum. Whenever there is a discharging sinus with unhealthy tissue around it, we do wound debridement. Debridement is a surgical process. Patient had undergone two debridements. After first debridement, patient was advised to take daily dressing and antibiotic injections for three months, consecutively. After the second surgery, patient is advised daily dressing. Ex. A4 and A5 shown to the witness. These are issued by myself. In my opinion, atypical mycobacteria were in saline water, surgical solution and instruments (surgical). Normally, patient does not acquire this infection. But if there is a breach in the sterilization process, this infection can come or even if the dressing materials are not properly sterilized, this infection can come. It is possible in this case that she had an operation in non-sterilised condition.

Ex. A6 is shown to the witness. A6 shows the similar infection in other patients. A6 shows similar organism of different strain. Since our hospital is a referral hospital, we see so many similar cases. This is because of the surgical procedure, this infection was caused to her".

27. In his response to the question, "Whether, a patient reporting on the 47 th day of LSCS with minimal discharge, a doctor can reasonably suspect a foreign

body material with suture material?", the Expert answered, as follows :- " When a patient, present with non-healing ulcer or recurrent sinuses or discharge or a swelling at the site of previous surgery, one can suspect - (i) suture granuloma (ii) foreign body reaction (iii) atypical mycobacteria (iv) bacterial infection. For diagnosing, atypical bacteria culture and sensitivity is required. Betadine is the commercial name of "Povidone - Iodine". We always prepare the wound with Betadine - Iodine. In Ex. X1, Operation Record is used on 25.06.2005, the patient came to CMC and wound debridement".

28. The aforesaid Expert's opinion read together with admission of treating doctor and the Opposite Party Hospital that there were cases of mycobacterium infection during the period December, 2004 and March, 2005, it can be safely concluded that the Complainant had contracted this post-surgical infection, in the Hospital only.

29. Regarding the second point for consideration, i.e., "Whether, the subsequent surgeries undergone by the Complainant at CMC, Vellore, were necessitated by the Mycobacterial infection contracted by the patient", a brief perusal of the Discharge Summary, dated 27.06.2005, which is three months subsequent to the Cesarean Section, needs to be seen. This summary shows that the Complainant had, at the time of admission, presented with discharge, in and around the wound site. She was diagnosed of having Atypical Mycobacterium Fortuitum. She was operated upon for multiple discharging sinuses in the wound site and granulated tissues were seen extended to the peritoneum. The following recommendations were made :- "RECOMMENDATIONS:

Tab . Paracetamol 1g, as and when required.

Daily dressing (sofratules)

Inj. Amikacin 500 mg intravenous, once a day, for three months.

Tab. Clarithromycin 500 mg, twice a day, for three months .

Tab. Ciprofloxacin 500 mg., twice daily, for three months.

To review in Surgery 6 OPD, after one month".

30. Thereafter, again, on 07.12.2005, she underwent a second surgery. The diagnosis in the Discharge Summary, reads as follows: "Granulomatous inflammation with focal necrosis and occasional foreign body granulomas to suture material, biopsy abdominal wall and omentum.

Note: Mycobacterial infection cannot be excluded suggest cultures.

0303 Rachel A & Rekha Samuel".

"RECOMMENDATIONS :

Tab Paracetamol 1g as and when required -

Daily dressings, till wound heals.

Inj. Amikacin 750mg intramuscular, three times a week.

Inj. Clarithromycin 500 mg twice a day .

Tab. Ciprofloxacin 500 mg twice daily.

To review in Surgery 6 OPD, after one month, for final culture report".

31. The patient's history, the operative findings and the Expert Opinion establish that the Complainant had suffered Mycobacterial infection, post-surgery, at the wound site, which had necessitated two subsequent surgeries. A brief perusal of the Discharge Summary dated 27.06.2005 shows that the Complainant was taking treatment in the Hospital for almost a month and the recommendations given, evidence that the Complainant was on a high dose of three antibiotics, for a period of more than three months, which necessitated in getting her serum creatinine and other parameter levels checked-up, regularly, on a weekly basis. She was also advised to get the dressing done, daily.

32. The State Commission has clearly not taken into consideration that "Mycobacterium Fortutium" and "Mycobacterium Avium Complex", are both "acid-fast bacterium", belonging to the same class of infection. This is supported by the medical literature in Association of Species of Non-tuberculous mycobacteria (NTM) with clinical categories of nosocomial infection , and also in the testimony of the witness - Dr. Arvandan Nair of referral Hospital.

33. We rely on the judgment of the Hon"ble Apex Court in Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee & Ors., (2009) 9 SCC 221 , wherein at Paras 93 & 95 of its judgment, it was held as under :- "NOSOCOMIAL INFECTIONS :

93. Nosocomial infections are infections which are a result of treatment in a hospital or a healthcare service unit, but secondary to the patient's original condition. Infections are considered nosocomial if they first appear 48 hours or more after hospital admission or within 30 days after discharge. Thus it becomes the liability of the hospital to prevent such infection specially in the cases where the patient has high risk of infection due to the nature of disease suffered.

95. It is now almost accepted worldwide that the hospital is liable to prevent such infections specially in the case where the patient has high risk thereof due to the nature of the disease suffered".

34. It is pertinent to note that even in the Discharge Summary, dated 07.12.2005, she was once again advised daily dressing, till the healing of the wound, together with three antibiotics, to be continued, with a further review, after one month. This evidences that the Complainant, not only underwent two surgeries, but had also undergone subsequent suffering and inconvenience on account of dressings, to be got done daily, and also the administering of antibiotics on a continuous basis, which hampered breast-feeding her child.

35. The medical literature clearly establishes that surgical wound infections involve opening of the wound; cleansing the wound; changing of the dressings and thereafter, debridement to allow healing of the open wound. This was not done by the treating doctor nor was the Complainant asked to visit again, for any further investigations.

36. Hence, we hold that the State Commission has committed an error in opining that there was no negligence on the part of the Hospital or the doctors, specifically when the medical literature and the Expert Opinion substantiate that the line of treatment rendered by the treating doctor, is not in accordance with standards of normal medical parlance.

37. It is settled law that the Hospital is vicariously liable for the acts of its employees as laid down by the Hon'ble Apex Court in *Savita Garg vs. National Heart Institute*, (2004) 8 SCC 56, and *Balram Prasad vs. Kunal Saha*, (2014) 1 SCC 384. Having held that the treating doctor had not done, what ought to have been done as per the normal medical practices, and that the Myco-bacterium infection is a hospital-acquired infection, in the instant case, we hold both, the hospital and the treating doctor, jointly and severally, liable for the medical negligence.

38. The Insurance Company filed an affidavit before the District Forum stating that the Hospital had taken an insurance policy for the period from 31.10.2004 to 30.10.2005, covering liability of 5,00,000/-.

39. Now, we address ourselves to the quantum of compensation that needs to be awarded. In the instant case, the Complainant had sought for a total compensation of 19,78,267/-, under various Heads (already quoted above). Keeping the facts and circumstances of the case in view and the amount of continuous suffering the patient had to undergo, we are of the considered view that a lump-sum amount of 10,00,000/- would be an adequate compensation for the sufferings, the Complainant had undergone, together with 2,50,000/- incurred towards medical and other expenses. This amount of 10,00,000/- is being awarded in the light of the pain and suffering undergone by the Complainant, on account of the two subsequent surgeries; the daily dressings; the loss of opportunity in "breast-feeding" the child and continuous usage of Antibiotics, which further necessitated in getting her parameters like Serum, Creatinine, etc., checked-up, regularly and also loss of income during that period as she was working as a Receptionist, earning Rs.3,000/- per month.

40. In the result, these Revision Petitions are allowed and the order of the State Commission is set aside. We affirm the order of the District Forum with respect to the direction given to the Insurance Company to pay the insured amount of 5,00,000/-. The balance amount of 7,50,000/- shall be paid, jointly and severally, by the first Opposite Party Hospital and the treating doctor, to the Complainant, within four weeks from the date of receipt of copy of this order, failing which, the amounts shall attract interest @ 9% p.a., from the date of filing

of the Complaint, till the date of realization. We also award costs of 30,000/- to be paid to the Complainant, by all the Respondents, jointly and severally.