

**IN THE COURT OF MR. TAHIR PERVEZ DISTRICT &
SESSIONS JUDGE, DISTRICT CONSUMER COURT,
SAHIWAL.**

Date of institution:- 03-06-2011

Dated of Decision :- 25-10-2011

**MUHAMMAD AJMAL S/O ABDUL GAFFAR CASTE MUGHAL R/O 185/9-L, TEHSILE &
DISTRICT SAHIWAL.**

-----CLAIMANT

Versus

- 1. DOCTOR IQBAL ANJUM S/O MUHAMMAD HANIF CASTE LOHAR R/O HARRAPA STATION, SAHIWAL.**
- 2. SHAHNAZ BIBI NURSE ,NEW SHAHBAZ MATERNITY HOSPITAL, HARRAPA STATION.**
- 3. DOCTOR ASIF SHAN S/O BOTA MASEEH R/O 190-A/9-L, SAHIWAL (INCHARGE OPERATION THEATRE).**

-----DEFENDANTS

**CLAIM FOR THE RECOVERY OF TWO LAC AS EXPENSES ALONGWITH
COMPENSATION OF RS. THREE LAC AND TO PROCEED AGAINST THE DEFENDANTS
AGAINST THEIR DEFECTIVE SERVICES.**

ORDER.

1. Muhammad Ajmal, the claimant has filed a claim for recovery of Rs. 2,00,000/- (two lac rupees) as expenses incurred on medical treatment of her wife besides Rs. 3,00,000/- (three lac rupees) as damages against the defendants for providing defective, misleading and misguiding services.

2. Brief facts of the case are that the defendant NO. 1 Dr. Iqbal Anjum and two others were running a private hospital with name and style "New Shahbaz Maternity Hospital". On 11-12-10, the claimant brought his wife Mrs. Riffat Yasmin to the said Hospital for delivery. One child was born in a normal way whereas for the second child, the major operation (C- Section) had to be undertaken. The second child died within 05 minutes of his birth due to lack of proper facilities. The wife of the claimant remained admitted in the maternity hospital of the defendants for 5 days. The claimant paid Rs. 25,000/- as charges. Later, the health condition of the wife of the claimant was deteriorated. The claimant took her to different hospitals for treatment. Lastly, he was told that a piece of cloth was still in the abdomen of the wife of the claimant even after operation. The claimant, after selling his gold ornaments and taking loan from his relatives, again got her wife operated on 28-12-10. This operation was conducted in the presence of EDO health, news reporters and other residents of the locality. Consequent upon second operation, a piece of cloth measuring "21x31" was taken out from the abdominal cavities of the wife of the claimant. The claimant alleged that the defendant No. 1 was not a qualified doctor, he had not proper instruments for operation, his hospital lacked the requisite intensive care facilities and that due to defective services provided by the defendants, his wife had to suffer a lot and also that his newly born child had died. Claimant submitted that he had incurred Rs. 2,00,000/- (Two lac rupees) on medical treatment of her wife beside suffering from mental tension for which he claimed Rs. 3,00,000/- (Three lac rupees) as damages.

3. The defendants rebutted the allegations leveled in the claim. According to them, the Dr. Kalim Ashraf, the

incharge of the hospital was qualified MBBS/ FCPS and operation of the wife of the claimant was conducted by Dr. Hafiz Arshad Javid. The newly born baby, who died within 05 minutes, was not healthy by birth. The defendant No. 1 claimed that he was working in the said hospital as a counter incharge under Dr. Hafiz Arshad Javid. He admitted that he was not a qualified doctor. According to the defendants, the claim had been filed in-connivance with their opponents in order to humiliate them.

4. In order to arrive at a correct conclusion and truth, the parties were directed to produce their evidence. Claimant examined himself as Pw-1. He was supported by Abdul Latif Pw-2 and Muhammad Akmal Pw-3. On the documentary side, claimant produced prescription of Doctor M. Tahir Ex-p1, blood reports issued by the Nadeem Clinical lab run by Doctor Iqbal Anjum Ex-p2&p3, prescription issued by the Amir Naveed Memorial Hospital Ex-p4, prescription of Bajwa Hospital Ex-p5 and p6, petition for registration of case Ex -p7, visiting card (photo copy) Mark A, admission form in Bajwa Surgical hospital mark B, C, certificate of Doctor iqbal mark D, copy of the FIR against the defendant Mark E, newspaper advertisement Mark F, copy of the plaint for recovery of Rs. 15,00,000/- Mark H and four photographs mark IJKL.

5. Muhammad Ajmal claimant Pw-1 stated that on 11-12-10 he took his wife Mrs. Riffat Yasmin to the hospital of Dr. Iqbal Anjum, the defendant No. 1 where a baby was born to her. Normal operation regarding birth of the daughter was conducted by Dr. Iqbal Anjum, the defendant No. 1 and nurse Shahnaz bibi and Dr. Asif Shan, the defendants No. 2 &3. After the delivery of one daughter, they apprised him that a second delivery

was also expected. Ultimately, at about 8.p.m on 11-12-10, her wife had to undergo a major operation. The male child was born. The newly born male child remained alive for 5 minutes only and later died because of lack of proper arrangements and care. He further stated that her wife had to be provided four blood bottles. Her wife remained admitted in his hospital for 5 days. The doctor charged Rs. 25,000/- as medical expenses. According to the claimant, he took his wife back to home. Later, due to swelling in abdomen of her wife, he took her to "Hira Hospital" for check up where he was told that there was a piece of cloth in the abdomen of his wife. He took the patient to Civil Hospital which also endorsed the views of Doctors of Hira Hospital. He was asked by the doctors to go for operation immediately but he took his wife back to home at Harrapa Station where her wife underwent a surgical operation and on that occasion EDO health and news reporters besides Dr. Iqbal defendant No. 1 were present. The piece of cloth measuring "21x31" was taken out from the abdomen of his wife. According to the claimant, he had to incur Rs. 5,00,000/- (five lac rupees) in total.

6. The statement made by Muhammad Ajmal claimant was supported and corroborated in toto by Muhammad Latif pw-2, Muhammad Akmal pw-3. All the three witnesses of the claimant were subjected to cross examination but nothing favourable to the case of defendants could be elicited from them. They denied in their cross examination that Dr. Hafiz Arshad Javid had conducted the operation of the wife of the claimant. Significantly, no question about the Dr. Kalim Ashraf was put to any witness of the claimant.

7. Documentary evidence mentioned above i.e Ex-P1 to P7 and mark A to Mark L further lend a support to the complainant's version.

8. In rebuttal, Dr. Iqbal Anjum, the defendant No. 1 appeared in witness box as Dw-1. He was supported by Saeed Ahmad Dw-2 and Rana Muhammad Ayyoub as Dw-3.

9. Dr. Iqbal Anjum Dw-1 stated that the incharge of "Shahabaz Maternity Hospital" was Dr. Kalim Ashraf and he was working there as counter incharge. According to him, operation was conducted by Dr. Hafiz Arshad Javid. Saeed Ahmad Dw-2 simply stated that defendant No. 1 was a counter clerk in the Shahabaz Maternity Hospital where operation would be conducted by Dr. Hafiz Arshad Javid and Dr. Kalim Dw-2 further admitted that he was not present when the operation of the wife of the claimant was conducted. However he admitted that hospital was working for the last 10/12 years. Dw-3 Rana Muhammad Ayyoub supported the statement made by Saeed Ahmad Dw-2. He admitted in his cross examination that he was not available in the hospital at the time of operation. According to him he was not an employee in the "Shahabaz Maternity Hospital" and that he was a cultivator by profession.

10. During cross examination Dr. Iqbal defendant No. 1 admitted that he had established a hospital at Harrapa Station for the last 10/12 years and that during this period, another FIR had also been registered against him but the matter was sub-judice. He further deposed in his cross examination that at the time of operation, he was available

outside the counter, however, he admitted that he was Matriculate but he had mentioned his education on his visiting card as F.Sc.

11. The unrebutted and undeniable facts which emerged from the oral as well as documentary evidence produced by both the parties, were that claimant took his wife to Shahabaz Maternity Hospital with labour pain where out of newly born twins, one died within 5 minutes. The second child was born as a result of major operation (C-Section). This child could not survive due to inadequate facilities and lack of proper care. At the time of stitching after major operation, a piece of cloth measuring "21x31" could not be taken out, obviously, due to negligence of doctors and concerned staff which conducted the major operation. This piece of cloth created a lot of problems for the wife of the claimant and swelling and other pain had to be faced by her. The claimant took his wife to different hospitals including Civil Hospital for expert opinion, ultimately, as a result of opinion of different doctors it was disclosed that the piece of cloth measuring "21x31" was present inside the abdomen of the wife of the claimant. Lastly, the claimant took his wife to "Bajwa Surgical Hospital" Harrapa Station where she had to undergo to a second operation. The concerned doctors successfully brought out the said cloth of piece from the abdominal cavities of the wife of the claimant and she felt relief. During all the process, obviously the claimant and his wife both had to suffer mental agony, physical disturbance, general inconvenience, besides direct financial loss.

12. Defendants had taken a plea that the operation was conducted by Dr. Hafiz Arshad Javid and Dr. Kalim Ashraf and Shahnaz nurse and Asif Shan had simply assisted them. Unfortunately, the defendants have failed to produce any confidence inspiring evidence in

support of their version. They have not produced any document to the effect that the Shahabaz Maternity was owned, possessed or belonged to Dr. Kalim Ashraf in any manner whatsoever or that the operation was conducted by Dr. Hafiz Arshad Javid. The defendants could produce the prescription or operation notes of Doctor Hafiz Arshad Javid to prove their case but they failed. It therefore can safely be said that it was defendant No. 1 who conducted the operation and other defendants assisted him. Thus, all of them were jointly and severally responsible for the serious fault, negligence, omission and non-professional attitude/duties.

13. Photocopy of visiting card Mark-A would show that Dr. Muhammad Iqbal Anjum defendant No. 1 claimed himself to be F.S.C, D.M.P.S R.H.M.P and medical specialist. His visiting card also carried the name “ New Shahabaz clinic” when the said photocopy was put to him during the cross examination, he did not deny that the said card did not relate to him. The bare perusal of the said card would show that the defendant No. 1 was not a qualified doctor. He had done some diplomas in Homoeopathic. Homoeo doctor, under the prevailing law of land, was not competent to conduct major or minor surgical operation particularly in matters of delivery. It was also significant to notice that defendant No. 1 showed as if he was F.Sc qualified but in his cross examination, he admitted that he was simply matriculate. Patently defendant No. 1 is a fraud person. Such like people should neither be spared nor any indulgence can be shown to them. Had Dr. Kalim Ashraf any link with Shahabaz Maternity Hospital or Dr. Hafiz Arshad Javid conducted the operation of the wife of the claimant, the claimant would not have spared them because they were neither related to him nor anything was on record suggesting that he had any sympathy for both of them. He would have implicated

both of them because his wife had to suffer a lot besides him and his other family members in all the process of two deliveries including C-Section operation and third operation wherein cloth of piece measuring "21x31" was taken out by "Bajwa Hospital" from abdominal cavities of the patient.

14. In view of my findings and reasons mentioned above, the court is swayed to believe that that the claimant, his wife and other family members had to suffer pangs of three operations resulting in financial loss as well as mental torture and agony. Therefore, the claim is accepted. The claimant is held entitled to get Rs. 2,00,000/- (Two lac rupees) as expenses incurred on all the three operations, purchase of medicines and other connected matters beside Rs. 3,00,000/- (Three lac rupees) as damages (total five lac rupees). Defendants are held responsible, individually and jointly, to pay this amount to the claimant within 30 days of this order.

15. Defendant No. 1 Dr. Iqbal Anjum was not a qualified doctor. He was not competent to run maternity home. He was simply a Homoeopathic Doctor as observed earlier. He showed himself as F.Sc qualified but as per Mark-D, he was simply matriculate with diploma in Homoeopathy. Thus, such like fraud person should not be permitted to play with lives of the innocent peoples. The defendant No. 2 and 3 being members of the same team were also liable for the same action. It is therefore further ordered that Shahbaz Maternity Hospital, Harrapa Station, Sahiwal being run by defendants shall be sealed forthwith. All the three defendants shall not be allowed to run or work in any hospital over and above their professional skill. The DCO Sahiwal shall ensure compliance of the order. The Registrar of this court is directed to send a copy of the order to DCO, Sahiwal for information and compliance.

16.
completion.

File be consigned after its due

Announced

25-10-2011

Tahir Pervez
District & Sessions Judge/District Judge
Consumer Court Sahiwal

Certified that this order consists of eight pages, which have been dictated and signed by me.

Tahir Pervez
District & Sessions Judge/District Judge
Consumer Court Sahiwal