

**IN THE COURT OF EJAZ AHMAD BUTTAR DISTRICT &
SESSIONS JUDGE / PRESIDING OFFICER, DISTRICT
CONSUMER COURT,
FAISALABAD.**

Complaint No	536/09
Date of institution	22-4-09
Date of decision	22-9-10

M. Ramzan Vs. Asad Surgical Hospital etc.

Petition for recovery of damages under Punjab Consumer Protection
Act 2005.

ORDER

Brief Facts of the case are that in August 2007, the petitioner brought his deceased wife, Kauser Bibi for gyne checkup at respondent's hospital. After necessary checking, petitioner was told that his wife would have to be operated to effect safe delivery of baby. On this, the petitioner provided requisite medicines and the respondents jointly carried out major operation of Kauser Bibi leading to the birth of a female baby Menaahil. After 9/10 days of operation, patient was released from hospital. The petitioner also paid an amount of Rs.9000/- as respondent's fee but patient's health did not restore. She kept on complaining of different pains. When the couple became worried, they again visited respondent's hospital but Kauser Bibi's condition still did not improve. When the petitioner and his wife felt dis-satisfied with respondent's treatment, they visited Allied Hospital, Faisalabad. After necessary checkup and ultrasound of Kauser Bibi, the petitioner was disclosed that during operation performed by the respondents, some foreign body (like sponge) was left in patient's abdomen which led to severe infaction necessitating another operation performed by Doctors Muhammad Bashir and Pervaiz Iqbal Nasir who took out one year–

old-towel (sponge) from patient's abdomen soaked with pus and putrified flesh. As the condition of Kauser Bibi went on deteriorating day by day, she ultimately died on 28/29.09.08. Against these facts, the petitioner attributed death of his wife to respondent's negligence defective service, therefore, petitioner demanded the suit amount from respondents as refund of respondent's fee, expenses incurred on purchase of medicines and damages on account of physical discomfort and mental torture suffered by the petitioner. The latter demanded from respondents to pay him the suit damages but they did not compensate him nor they cared to respond to the notice sent by the petitioner, hence this petition.

2. Petition was contested by the respondents. Both the parties produced evidence in support of their respective contentions. Apart from parties evidence, Dr. Muhammad Bashir, Chief Consultant / Child Specialist and Dr. Pervaiz Iqbal Nasir Surgeon, (both from Civil Hospital Gojra) Dr. Syed Anjum Mehdi, Radiologist Allied Hospital, Faisalabad and Anwaar Ahmad, Assistant to EDO Health, Faisalabad all were examined as court witnesses. Besides oral evidence, parties also produced their documentary evidence.

3. Arguments heard and record perused.

4. Case of the petitioner is that his wife, Kauser Bibi was operated by the respondents on 24-8-2007 and during surgery some foreign body (sponge) was left inside patient's abdomen due to the negligence of respondents which led to complications. As a result of these complications, Kauser Bibi ultimately had to go through another surgical operation by Doctors Muhammad Bashir and Parvez Iqbal Nasir Thereafter, septicemia developed and it became the cause of death of Kauser Bibi. Apart from petitioner's evidence, CW/1, 2 and CW/3 also appeared to support the

complaint. These witnesses are found independent and reliable. Dr Muhammad Bashir CW/1 alongwith Dr Parvez Iqbal Nasir CW/2 had jointly operated Kauser Bibi and found sponge inside her abdomen attached with intestines. Apart from oral testimony of these witnesses, there is another important piece of evidence coming from Dr Saeed Anjum Mehdi, Radiologist, Allied Hospital, Faisalabad. According to his report Ex-CW3, foreign body like sponge was found in the abdomen of Kauser Bibi during ultra sonographic examination and operation by the respondents. The aforementioned CWs are independent and reliable witnesses. During cross examination, no ill will or any enmity on their part with respondent was alleged by latter's' learned counsel. Even otherwise, their expertise was not challenged by the respondents. There is another corroborative piece of evidence that is report of Inquiry Officer (Ex-CW-4/1). Inquiry was conducted by the District Health Officer. According to the findings of Inquiry Officer, sponge was found inside Kauser Bibi's abdomen during surgery by the respondents but the Inquiry Officer considered it a human error. As far as respondents' evidence is concerned, surgical operation of Kauser Bibi by respondents at their private hospital is not denied. Existence of foreign body (sponge) is also not denied. The respondents nowhere claimed that such foreign body was already present in patient's abdomen when they operated her or after the surgery from their hospital, Kauser Bibi gained such foreign body from elsewhere. Ultrasonography of Kauser Bibi on 11-9-08 at Allied Hospital Faisalabad is also admitted by DW/1 during cross examination. DW/2, Dr. Uzma Asad also admitted to have operated Kauser Bibi in her private hospital. Here, I would like to discuss an important factor which surfaced during the statement of DW/2. During cross examination she tried to take the instance, that after surgery Kauser

Bibi came to her and stated that a mid wife had inserted a piece of cloth (smearred with medicine) into her uterus which caused her bleeding, thereafter mid wife also put a piece of sponge into her uterus to stop bleeding meaning thereby that a piece of sponge might have been introduced into the body of Kauser Bibi by the mid wife. But such statement of DW/2 cannot be considered or given any weight for the reason that as per ultra sonography report (Ex CW/3) sponge was found attached with intestine whereas the mid wife inserted the sponge into the uterus. Moreover, such piece of evidence coming from DW/2 has no evidentiary value being hearsay because Kauser Bibi is no more in this world to testify such statement. So, such type of evidence is also not available to the respondents.

5. The upshot of above discussion is that from the evidence on record, it is proved beyond doubt that Kauser Bibi was surgically operated by the respondents and due to their negligence, a piece of sponge was left inside Kauser Bibi's abdomen which caused various complications and became the igniting cause of her second surgical operation by Doctors Muhammad Bashir and Parvez Iqbal Nasir which lead to the death of Kauser Bibi—mother of two minor daughters and deprived them permanently of their motherly love and affection. Thus, respondents are found negligent in the performance of their duty and should be taken to task.

6. As both the respondents failed to offer proper medical service to the petitioner being guilty of medical negligence, therefore, petitioner's claim is liable to be accepted. He has assessed as claim at Rs.5,49,400/- which is found quite reasonable keeping into view, the anguish suffered to the petitioner for more than a year and loss of human life. Apart from

damages claim, the respondents shall also pay litigation expenses of Rs.20,000/- to the petitioner as well as deposit fine of Rs.100,000/- in the Government Treasury. A copy of this order also be sent to the Medical and Dental Council, Islamabad to initiate discipline action against delinquent respondents under intimation of this court.

After due completion, file be consigned to record room.

Announced
22-9-10

Ejaz Ahmad Buttar,
District & Sessions Judge/
Presiding Officer,
District Consumer Court, Faisalabad.

Certified that this order consists of five pages which have been corrected and signed by me.

Announced
22-9-10.

Presiding Officer,
District Consumer Court, Faisalabad.