

IN THE NAME OF ALLAH ALMIGHTY, THE MOST GRACIOUS AND THE MOST MERCIFUL.
IN THE COURT OF CHOUDHARY MUHAMMAD YOUSAF AUJLA,
PRESIDING OFFICER/ADDITIONAL DISTRICT & SESSION JUDGE,
DISTRICT CONSUMER COURT, FAISALABAD.

Claim No:	49/DCC-2007.
Date of Institution of Claim	17.11.2007.
Date of decision	02.04.2008.

Umer Draaz Vs. Doctor Naseer Ahmad Chaudhary etc.

CLAIM FOR RECOVERY OF DAMAGES Rs. 1,00,000/- U/S. 25 OF
PUNJAB CONSUMER PROTECTION ACT,2005.

ORDER:-

1. The claim was made by the claimant against the defendant for providing deficient and improper services to the claimant who unfortunately met with an accident on 06.07.2007 at Sargodha Road near Motorway while coming to his house after doing his labour job and fractures as well as injuries were caused to him on his legs and face and he was attended by the emergency service of Rescue 1122 and taken to Allied Hospital from where due to careless attitude and unattending environment of Government Hospital, his relatives opted to get him treated from Al-Noor Hospital where two fractures were surfaced in his leg in an x-ray report conducted by the defendant and the defendant demanded Rs.80,000/- as operation fee and during operation an-other amount of Rs. 20,000/- was demanded for the 3rd fracture which was discovered during the operation by the defendant and otherwise the claimant was threatened to be kicked out from the hospital and it was also paid by him.

2. The claimant also paid Rs.20,000/- as hospital charges and was operated, after the operation the claimant was told that the nail was entered in the upper part of the knee whereas the plates were adjusted in the lower part and the claimant paid visits to the defendant with a complaint of pain on 04.09.2007 and 25.09.2007 and the defendant advised / opined to have a 2nd operation in lieu of Rs.20,000/- as operation fee and the claimant requested that his operation be conducted in the previous fee but the defendant flatly refused to extend any concession to the claimant and referred the claimant to the Allied Hospital, Faisalabad, where the claimant consulted orthopaedic surgeons of Allied Hospital and that of Sahal Hospital on 27.09.2007 and on 28.09.2007 respectively who jointly opined that there was wrong entry of the nail and loose

binding and there was much gap between nail and broken leg, so it was to be re-operated and on 01.10.2007 the claimant was re-operated by Doctor Tariq Mehmood Choudhary in Yaseen Memorial Hospital, Jinnah Colony, Faisalabad and Rs.30,000/- was paid to him as operation fee, which was only due to improper services, professional misconduct and negligence of the defendant. After re-operation the previous nail was taken out which was of highly inferior quality. It was handed over to the claimant by the said doctor and it was just an iron rod having worth Rs.2,00/- and does not fall within the definition of medical instruments.

3. The claimant has made the prayer for action against the defendant under the Punjab Consumer Protection Act, 2005 for returning of operation fee as well as payment of damages and compensation for physical and mental torture.

4. The claim was hotly contested by the defendant that the matter does not fall within the purview of consumer court and the operation of the claimant was carried out under the contract of personal services which excluded the claimant from the definition of consumer and that the claim was barred by time.

5. On facts, the date of arrival of the claimant in the Al-Noor Hospital was also denied by the defendant and that only Rs.20,000/- was charged by the defendant as surgeon charges and Rs.8,000/- as hospital charges and on 25.09.2007 only Rs.20,000/- were demanded from the claimant for 2nd operation and at the refusal of the claimant he was referred to Allied Hospital, Orthopaedic Department but the claimant got himself operated on 01.10.2007 from the Yaseen memorial Hospital under the care of Doctor Tariq Mehmood Choudhary, Orthopaedic Surgeon attached with Allied Hospital, Faisalabad.

6. During operation his femoral fractures were fixed with K nail and circular wire, while the fracture below knee was fixed with plates and screws only minimal and essential procedure was performed to relieve the petitioner from agony and to save his life. He was given three pints of blood along with other fluids and medications, same day on 08.07.2007 and the claimant remained in hospital till 11.07.2007 and was discharged with satisfactory condition and advise.

7. The patient failed to enter into Pre-trial settlement, so they were directed to produce their evidence.

8. To prove his case the claimant Mr. Umer Draaz himself appeared as PW-1 with his affidavit Expw-1/1 and examined his real brother Mr. Ghulam Shabbir by profession an Assistant District Attorney, Faisalabad as PW-2 with his affidavit Ex.Pw-2/1 and produced the certificate issued by the defendant dated 04.09.2007 Ex.P-1 and certificate dated 25.09.2007 Ex.P-2 and produced the X-Ray films dated 17.07.2007 as Mark-A and of dated 27.09.2007 as Mark-B.

9. In rebuttal, the defendant himself appeared as DW-1 with his affidavit as Ex.Dw-1/1 and produced cash memo of the hospital as Ex.D-1, patient chart as Ex.D-2, consent of the brother of the patient as Ex.D-3, Ex.D-4, Ex.D-5, Ex.D-5 and treatment chart Ex.D-6. Arguments heard, record perused. As regards, the preliminary objections of the defendant regarding the relationship of consumer and that of service provider between the patient and doctor is concerned, it is there clearly provided in the Punjab Consumer Protection Act, 2005 in section 2 (k) that services includes the provision of any kind of faculties or advice or assistance such as provision of medical, legal or engineering service. Moreover the doctors are liable under the prevailing laws such as Civil Procedure Code, Pakistan Penal Code, Law of Contract, Sale of Goods Act, Law of Torts and other specific Legislations. Under Pakistan Penal Code (PPC), the doctor who commits criminal liability is punishable with imprisonment and diyat amount for a term which may extend three years, or with fine not less than five thousand rupees which may extend to twenty thousand rupees or with both. Civil liability arises in case of medical service rendered on payment of fee, U/S. 73 and 74 of the Contract Act, 1872. Under the law of Torts (a wrong that is independent of contract) civil liability is applicable to doctors of all categories, that is whether they provide their service for a fee or as charity committing professional misconduct and it can direct the removal of the name of any person enrolled as medical practitioner on the grounds of professional misconduct and now after the promulgation of Punjab Consumer Protection Act, 2005 the doctors are liable to pay damages / compensation etc, and in default there of to undergo the imprisonment.

10. During the final arguments and perusal of file, it came on the file that 2nd operation of the claimant was conducted by Doctor Tariq Mehmood Choudhary, Orthopaedic Surgeon of Allied Hospital, Faisalabad also working as consultant with Yaseen Memorial Hospital, Faisalabad and as per claimant during the 2nd operation it was observed that there was wrong entry of the nail,

loose binding and much gap between nail and broken leg. The defendant had denied this fact in evidence. To ascertain this controversy of the parties, Doctor Tariq Mehmood Choudhary, Orthopaedic Surgeon was summoned as court witness, who appeared as CW-1 and made the statement as follows

“ The patient Umer Draaz at his own came to me in the Sahal hospital Faisalabad. He was suffering from non-union in left femur. He advised him the Interlocking Nail and bone grafting and operated him for the same because fracture was segmental, comminuted in which there was a lot of chances of non-union”.

11. He was cross-examined by the learned counsel for the claimant and for the defendant separately but nothing favourable to the claimant and adverse to the defendant came on the file. There was only an expert opinion and that too of a 3rd party i.e Doctor Tariq Mehmood Choudhary, Orthopaedic Surgeon, Allied Hospital which could give favour to the claimant as alleged by him in his claim that Doctor Tariq Mehmood Choudhary, Orthopaedic Surgeon, Allied Hospital had opined that there was a wrong entry of the nail, loose binding and much gap between nail and broken leg, but he has not given any supporting statement for the claimant. The claim of the claimant was based only on the ground that he was suggested the 2nd operation by the defendant just to grab some money and to conceal the complications / irregularities committed by him during the 1st operation but the statement of CW-1 Doctor Tariq Mehmood Choudhary, Orthopaedic Surgeon has failed to extend any favour to the version of the claimant, as it could not bring on file by the claimant that the first operation conducted by the defendant was with gross negligence, error of judgment, professional accident or recklessness. The claimant otherwise did not point out any such medical negligence committed by the defendant during the 1st operation and he even admitted in his cross-examination that he was ready for second operation from the defendant if he was not demanded the fee for the second time by the defendant. Accordingly the court remains with no option but to conclude that the claimant has failed to prove his claim against the defendant.

12. But before parting with this judgment, I must observe that though the claimant has failed to prove his claim yet there are some callous behaviors and conducts of the medical profession regarding the treatment of the poor patients, as the standards in the medical profession are deteriorating and pursuits of money rather than pursuit of excellence appears to be the most

important motive force in patient care. In this case the claimant belonging to a labour class was fully charged by the defendant as well as hospital administration, whereas as per his version he was issued the receipts much less than the charged amount.

13. There is also another aspect regarding Government hospitals where the ill-fated claimant was shifted at the very outset of his meeting accident, by a team of emergency service Rescue 1122 but the claimant who needed immediate surgery was not properly attended and he opted to get his treatment in a private hospital, where he got himself operated from the Al-Noor hospital by the defendant. When an occasion arose for a 2nd operation, it was the defendant who kicked him out from Al-Noor Hospital by referring him back to Allied Hospital, Faisalabad, where he was examined by CW-1 Doctor Tariq Mehmood Choudhary, Orthopaedic Surgeon of Allied Hospital on 28.09.2007 but he was operated at a private hospital Yaseen Memorial Hospital, Faisalabad at the costs of Rs.18,000/- admitted by him, during the cross-examination. These all-unfortunate situations especially prevailing with the medical profession and that too in the Government Hospitals requires immediate attendance and this question is to be addressed forth with and I see a very noble, honest, upright and devoted personality with the name of Professor Doctor Choudhary Muhammad Asghar Rnadhawa presently working as Principal, Punjab Medical College and also as Chief Executive of Allied Hospital and District Head Quarter Hospital, Faisalabad to attend the situation by spending some more time on this subject and to ensure that confidence of poor patients is recomposed at the Government Hospitals run with billions of rupees from the public exchequer as well as upon the persons of noble profession of medicine working in the Government Hospitals and to save the peoples from the clutches of private physicians / doctors / consultants as well as hospitals.

With these observations, the matter is filed.

Announced
02.04.2008

Ch. Muhammad Yousaf Aujla,
Presiding Officer/
Additional District & Session Judge,
District Consumer Court, Faisalabad.

Certified that this judgment consists of five pages, dictated, signed and corrected by me.

Ch. Muhammad Yousaf Aujla,
Presiding Officer/
Additional District & Session Judge,
District Consumer Court, Faisalabad.