**BEFORE THE HON’BLE DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION, (MAIN) VADODARA**

**CC.No.762/2008**

IN THE MATTER OF:

1. Jagruk nagrik (Voluntary consumer association)

Through their managing trustee, P.V .Moorjani

Opp. LBS Vidyalaya, Near Prerna School,

Sangam karelibaug road, Vadodara

1. Farida bahan Yusuf Khan Pathan

Hathikhana Mahvat Faliya, Near Anaj market

Fatehpura, Vadodara.

................ COMPLAINANT

Vs.

1. Dr Manubhai Vardiwala,

Usha nursing Home

Mrudula Sadan, Pratap road,

Rampura Vadodara.

1. Dr Mukesh M. Tailor

Maitri hospital

Lab complex, near New India Mill,

Jetalpur road, Vadodara.

1. Shri Narhari Aarogya Kendra hospital,

Fatehganj, Vadodara

1. The Oriental Insurance Company Ltd.

201 / 202 Paradise complex,

Sayajigunj, Vadodara 3 90005

............. OPPOSITE PARTY

COMPLAINT UNDER SECTION 35 OF THE CONSUMER PROTECTION ACT

RESPECTFULLY SHOWETH:

1. That the Complainant is a citizen of India residing in Fatehpura, Vadodara, and the Opposite Parties abovenamed, have their head offices in Vadodara.
2. This complaint relates to the medical negligence of the opposite party faced by the complainant’s husband.
3. The husband of the second complainant, Late Yusuf Khan Abbas Khan Pathan, was serving as a permanent peon at Nagar Palika Sala No. 19. On 08/09/2006, while starting his bike, he suffered an injury to his leg due to the kick-start, and his leg started swelling. He was taken to the Usha Nursing Home of Opponent No. 1, where the doctor prescribed some medicine, but there was no improvement.
4. On 10/09/2006, Mr. Pathan was admitted to Opponent No. 1's nursing home until 14/09/2006. Subsequently, he was treated by Dr. Tejas Majboor for jaundice, and after laboratory tests, it was diagnosed that he was suffering from jaundice.
5. On 17/09/2006 at around 4:00 pm, Mr. Pathan had breathing problems, and the second complainant immediately tried to shift him to a nearby hospital. However, doctors were not available. The second complainant then approached Opponent No. 2's Maitri Hospital, where Mr. Pathan was examined and treatment was started. However, he had excessive sweating, felt very hot and uneasy, and it was necessary to shift him to an air-conditioned room. After repeated requests, Rs. 400/- was paid to the hospital for immediate treatment, and Mr. Pathan was admitted around 6:00 pm.
6. At this point, no prior informed consent was taken from the patient or his relatives and friends who were with patient before carrying out diagnostic tests
7. At around 10:00 pm, Opponent No. 2 examined Mr. Pathan and found that his health had deteriorated severely, and his pulse rate was reducing drastically. On the advice of Opponent No. 2, Mr. Pathan was shifted to Opponent No. 3's Narhari Aarogya Kendra Hospital, as there were no ICU facilities at Opponent No. 2's hospital. Opponent No. 2 also gave a letter dated 17/09/2006 for admission to the ICU.
8. Mr. Pathan was brought to Opponent No. 3's hospital with continued treatment of a syringe bottle. He was examined and prescribed some medicines but was not admitted to the ICU. His condition became serious, and none of the doctors visited him. Meanwhile, his health deteriorated suddenly with severe breathing problems.
9. The doctor did not visit him, and he died at 2:00 am on 18/09/2006. He died because he was not admitted to the ICU by Opponent No. 3, and there was no attendance by the doctor, despite being an emergency case. If timely and proper treatment had been given, he could have been saved. This was serious negligence on the part of Opponent No. 3.
10. Opponent No. 2, being a surgeon, wasted too much time even when he had no ICU facility, and at the eleventh hour, instead of admitting Mr. Pathan to ICU treatment, he transferred him to Opponent No. 3.
11. On hearing about the death from Opponent No. 3, Opponent No. 2 visited Narhari Aarogya Kendra at 2:30 am. Due to such negligence by Opponents No. 2 and 3, and their lack of promptness and failure to utilize their skills and facilities in such a critical situation, Mr. Pathan lost his life.
12. The second complainant sent a notice to Opponent No. 3 due to their irresponsibility, stating all the facts and requesting them to hand over all the papers and details of the treatment given to her husband. In response, Mr. Deepak Vyas, the advocate of Opponent No. 3, sent a reply with copies of all the papers and stated that the patient was admitted as per the advice from Opponent No. 2, and treatment was also given as per Opponent No. 2's advice.
13. Due to this, the second complainant consulted a doctor for an expert opinion on the issue. On 04/04/2008, an expert opinion was obtained, which, based on the indoor treatment papers and expert medical opinion, concluded that Opponents No. 1 to 3 had remained negligent and shown gross deficiency in rendering medical services. It was also found that in the papers supplied by Opponents No. 1 to 3, there were differences in the type of writing ink used and the continuity, raising questions about the authenticity of the case papers.
14. Late Mr. Yusuf Khan Abbas Khan Pathan died at the young age of 41, and he was drawing a monthly salary of Rs. 8,288/-. The second complainant has lost her financial, family, and personal support due to her husband's untimely demise, and she has to maintain her family with the little available pension of Rs. 3,500/-. She is the sole sufferer due to the opponents' deficient service and unfair practice.
15. The complainants have suffered tremendous mental and social agony due to the negligence and deficiency in service by Opponents No. 1 to 3, which led to the premature death of Mr. Yusuf Khan Abbas Khan Pathan.
16. The Complainant relies on the following evidences:
    1. Copy of letter of opponent No 2
    2. Copy of notice from applicant number 2
    3. Copy of reply from Opponent No. 3
    4. Copy of expert opinion
    5. Copy of letter given by opponent No. 2 to applicant number 1
    6. Copy of notice from applicant No. 1 to opponents
    7. Copy of reply by opponent no. 3 to applicant No. 1 in August 2006.
17. The complainant has not filed any complaint having the same cause of action in any other forum or court.
18. The complainant resides within the jurisdiction of this Hon'ble Commission. Hence this Hon'ble Commission has jurisdiction to try and entertain this complaint
19. The total consideration amount paid in purchasing the mobile phone is less than Rs. 50 lakhs. Hence, this Hon'ble Commission has jurisdiction to entertain this complaint.
20. The cause of action arose on 18/09/2006 which is within the limitation period prescribed under the Act. Hence, the claim in the complaint is not barred by the law of limitation.
21. The Complainant is complying with the Court Fees Mandated under Rule 7 of the Consumer Protection (Consumer Dispute Redressal Commission) Rules, 2020.
22. Therefore, the complainants pray before this Hon'ble Commission to:
    1. Order Opponent No. 2 to pay Rs. 15,00,000/- towards financial support to the second complainant and her family for the loss of income and future earnings of the deceased.
    2. Order Opponent No. 2 to pay Rs. 1,00,000/- towards miscellaneous expenses for medical tests, etc.
    3. Order Opponent No. 2 to pay Rs. 3,00,000/- towards compensation for causing tremendous mental agony to the complainants.
    4. Order Opponent No. 2 to pay Rs. 2,00,000/- towards the cost of the present complaint.
    5. Grant any other relief deemed fit and proper in the interest of justice.

Dated this day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COMPLAINANT**

**VERIFICATION**

I, Farida bahan Yusuf Khan Pathan, resident of Fatehpura, Vadodara hereby declare that I have not misrepresented any facts nor have tried to hide any information in my above complaint. All the facts mentioned herein are true to the best of my knowledge.

Name & signature of the complainant