

**THE WEST BENGAL CLINICAL ESTABLISHMENT
REGULATORY COMMISSION.**

Present: Justice Ashim Kumar Roy, Chairperson.
Dr. Sukumar Mukherjee, Member.
Dr. Gopal Krishna Dhali, Member.
Dr. Makhan Lal Saha, Member.
Dr. Debasis Bhattacharyya, Member.
Dr. Maitrayee Banerjee, Member.

COMPLAINT ID: NPG/2017/000166.

Namita Mahanti.....Complainant.

-versus-

**Rabindranath Tagore International Institute of Cardiac Sciences &
others**.....Respondents.

Heard on: 08/09/2017
22/09/2017

Date of pronouncement of judgment: 3rd November, 2017.

J U D G M E N T.

Smt. Namita Mahanti, the wife of service recipient (Haripada Mohanty), who died at Rabindranath Tagore International Institute of Cardiac Sciences, while undergoing treatment, has approached this Commission against the Clinical Establishment with two fold allegations:-

- a) Medical negligence and deficiency of service on the part of Dr. Anup Khetan and the attendants of the Clinical Establishments and over charge.
- b) Delay in releasing the dead body.

2. Heard the complainant who appears in person and the respondents.

3. The complainant reiterated her case against the respondent as disclosed in her complaint. She alleged since at the hospital after admission, her husband was not passing stool for two days and complaining of burning sensation both in chest and abdomen, she immediately reported such facts to the hospital authority (nurses and attendants) but no care was taken in addition to the allegation against Dr. Anup Khetan that he, in spite of repeated calls did not visit the patient although from before admission the patient was under his treatment for a couple of years. Lastly, she alleged that her husband was declared clinically dead at around 8.15 pm on 2nd July, 2017, the hospital authority informed them that dead body cannot be released before 4 hours i.e. before 12 midnight and on the next day when they came to the hospital around 8.00 am in the morning and intended to take the dead body to their native place for cremation,

the hospital authority refused to release the body until entire bill was cleared, although the patient was admitted in the nursing home under mediclaim (cashless) and already pre-authorization of Rs.25,000/- was received by the hospital against the actual bill of around Rs.31,038/- and then body was released only after final approval was received from the insurance company and on payment of Rs.8,023/- by credit card.

On the other hand, from the side of the respondents, a written reply has been filed by the doctors. In the reply, the doctors denied the allegations that either there was any negligence in treatment or deficiency in service but there was no whisper against the complain of delayed release of dead body. No reply was, however, filed from the side of the respondents, although sufficient opportunity was given. However, it is verbally denied that there was no intentional delay on the part of the clinical establishment in releasing the dead body by the person representing it.

4. Now going through the bed head tickets, we find the allegation of the complainant against Dr. Anup Khetan about medical negligence and deficiency in service is not tenable. We find from the bed head ticket/Doctor's Progress Notes that Dr. Anup Khetan on 1st July, 2017 at night around 10.00 pm attended the patient and prescribed medicines with a further note... ***relatives to see me regarding further discussion and prognosis discussion...*** and thereafter on 2nd July, 2017 around 1.00 pm Dr. Anup Khetan again visited the patient, prescribed medicines and gave a further note... ***ask relatives to see me with old files...*** In between other doctors visited him on number of occasions.

We further find from the records that the service recipient, an old male, aged about 78 years, in a known case of hypertension, ischaemic heart disease and atrophied left arm was brought at the emergency around at 3 pm in the afternoon of June 30, 2017, complaining haemoptysis / chest pain on exertion for two days, disability of left hand and neck pain radiating to shoulder.

Doctor's progress note further reveals the patient on 2nd July, 2017 at around 7.00 pm suffered severe bradycardia (HR 30 /min – 40/min) and despite of Atropin injection and other management, went into cardiac arrest and finally at 8.15 pm was declared dead.

5. Now having regards to what we find from the doctor's progress note and when the complainant is unable to refute what transpires therefrom, the case of the complainant against the doctors cannot be sustained.

6. The next allegation of the complainant in spite of reporting to the nurse and other staff of the hospital that the patient was not passing stool for last two days and feeling burning sensation in the chest and abdomen, no action was taken, there is no contemporaneous record about the same. The complainant was also not able to substantiate the same in any manner whatsoever.

7. The next point left for consideration as to whether there was any intentional delay on the part of the nursing home authority in releasing the dead body due to billing issues.

8. According to the condition of the license issued under The West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017, delay in releasing the dead body of any patient or service recipient to their representatives due to billing or other issues, including inability to pay the treatment cost, is strictly forbidden and not permissible.

Apart from above the Commission is of the further opinion non releasing of the dead body of any patient or service recipient to their representatives due to billing or other issues, including inability to pay the treatment cost, amounts to irrational and unethical trade practice. If it is found that any clinical establishment is indulging in such practice that would come within the definition of actionable wrong and shall be liable to compensate the victim of such wrong.

9. In the light of above now we propose to examine the case in hand.

The admission case sheet shows that the patient, the husband of the complainant on 30th June 2017 was admitted at RN Tagore International Cardiac Sciences, under the patient category-*corporate* and corporate sponsor (TPA)-- *Good Health Plan Limited*. Admittedly, on the day itself the hospital authority received from the concerned sponsor (TPA), initial approval of Rs. 25,000/- for the treatment of the patient vide pre-authorization letter dated 30th June, 2017. Finally, the insurance authority sanctioned Rs.25,208/- against the total treatment cost of Rs. 31,038/- as per the bill raised by the nursing home authority, stipulating that not more than Rs.6076/- be realized from the patient. A further sum of Rs.1179/- was waived from the bill amount on account of sponsor discount as per corporate tie up, bringing the net outstanding to Rs.4897/-.

On July 2nd, 2017, at around 8.15 pm, the patient was declared clinically dead and the patient party was informed by the hospital authority, according to the medical norms, no dead body can be released with certificate of death before expiry of four hours. Although on the next morning the patient party requested the hospital authority to release the dead body at around 8 am in the morning, since they were to take the same to their native place at Contai, Purba Medinipur, which takes four and a half hour journey from Kolkata but, the dead body was not released as no final sanction was received from the insurance company. The record shows finally the dead body was released at around 11.30 am on the next morning (July 3rd, 2017) and after realizing payment of Rs.8023/- by credit card at around 11.10 am. It is therefore evident that the nursing home authority released the dead body only after realizing the balance amount for the cost of treatment.

As noted above, although the actual due after taking into account the sanction amount and the discount amount, the outstanding reduced to Rs.4897/- but the hospital authority obtained a sum of Rs.8023/- from the patient party through credit card. For further clarification, we summoned the representative of the Insurance Company and the concerned TPA and on behalf of the Insurance Company, their Manager, Kolkata R.OO, U.I.I.C.L, Miss. Bandita Dirghangi and Swapna Saha, Executive attached to T.P.A., were present and produced the final sanctioned order, duly authenticated by Mrs. Dirghangi and witnessed by Ms. Swapna

Saha and disclosed that the hospital authority is no way entitled to realize any amount more than that of Rs.6076/- which was stipulated.

This attitude and practice of the clinical establishment is not only violative of condition of license, and at the same time, on the face of it, is utterly inhuman and amounts to irrational and unethical trade practice. In any event, this is not one of such case where unpaid treatment cost had been accumulated to huge extent and remained outstanding over a period of time. But this is a case where the patient took admission against cashless medi-claim and hospital authority received pre-authorization to the tune of Rs.25,000/- and final cost of treatment was extended to Rs.31,038/- and the outstanding amount was only Rs.6076/-. Therefore, the impugned action of the Clinical Establishment is grossly unjust and unethical. The detention of the dead body for hours together for non-payment of a paltry sum of Rs.6076/- has definitely caused immense harassment, pain and sufferings to the bereaved family of the deceased, who have just lost one of their near and dear one forever. In addition to that, it cannot be overlooked that the patient party was charged in excess, going beyond the stipulation of the Insurance Company.

At this stage it would be more apposite to point out during the hearing three letters addressed to the Medical Super of the Clinical Establishment by the relations of the deceased service recipients were produced by the representative of the Clinical Establishment Mr. Pratik Jain. We find two letters were addressed to the Medical Superintendent of the Clinical Establishment by the relatives of the deceased service recipient expressing their difficulties in obtaining the dead body for cremation due to the reasons, in the first case, some of the close relations of the deceased were not available and in second case, the deceased was a Bangladeshi National and the body was to be taken to his country after fulfilling certain legal formalities.

So far as the last case is concerned, we find that in his letter one of the relations of the deceased service recipient requested the nursing home authority to retain the dead body at the morgue till the final sanction of medi-claim is received. Even if we accept such plea of the relation of the deceased is genuine and not coerced, then also the nursing home authority cannot keep dead body in the morgue on such a plea as same is contrary to the condition of license, for non-payment of treatment cost under otherwise justified.

Although the actual liability of the patient party was Rs.6076/- but they were charged Rs.8023/-. The explanation forthcoming from the side of the nursing home authority for levying the extra amount of Rs.1947/- is not at all acceptable.

We, therefore, unhesitatingly hold that not only the extra charge was imposed on the patient party but at the same time, by delaying to release the dead body for more than three hours. The Clinical Establishment has indulged in unethical trade practice.

In view of above, the Commission is of the opinion that this is a fit case for awarding compensation to the complainant, the wife of the service recipient for the harassment, anxiety, mental agony and pain suffered by her and other members of his family due to the reason of the nursing home authority .

Heard the respondent clinical establishment on the question of quantum of compensation.

Now considering the degree of harassment, anxiety, mental agony and pain suffered by her and other members of his family due to the unjust, unethical, unreasonable and inhuman conduct of the nursing home authority and the capacity of the Clinical Establishment and in the light of the provision of Section 32 of the Clinical Establishments Act, we direct that a sum of Rs.50,000/- be paid as compensation to the complainant, Mrs. Namita Mohanti, the widow of service recipient by the clinical establishment, Rabindranath Tagore International Institute of Cardiac Sciences within ten days from this date. Such amount be paid to Mrs. Namita Mahanti by account payee banker's cheque.

It goes without saying that this order is without prejudice to the power of the licensing authority, as conferred upon it, under the Clinical Establishments Act to impose penalty for violation of condition of license and taking such other legal actions as are available in law.

This order be communicated to the licensing authority.

Sd/-

Justice Ashim Kumar Roy,
Chairperson

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Gopal Krishna Dhali, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

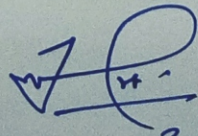
Dr. Debasis Bhattacharyya, Member.

Sd/-

Dr. Maitrayee Banerjee, Member.



Authenticated


3/11/2017
Secretary
W.B.C.E.R.C.
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