

Office of the West Bengal Clinical Establishment Regulatory Commission
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Case Reference: WBCERC/HOW/103/2024-25

Present: Justice Ashim Kumar Banerjee (Retired), Chairman

Dr. Sukumar Mukherjee,

Dr. Makhan Lal Saha

Dr. Maitrayee Banerjee,

Smt. Madhabi Das.

Mr. Soumen Kundu..... Complainant

- Versus-

Medica Superspeciality HospitalRespondent

Heard on: August 29, 2024 and November 29, 2024

Judgment on: January 22, 2025.

FACTS

Mr. Uttam Kumar Kundu a 68 year old male patient was admitted on March 1, 2023 for undergoing CABG procedure under the surveillance of Dr. Kunal Sarkar and his team of CTVS. On March 3, 2023 the surgery was performed by Dr. Sarkar and his team and the patient was discharged on March 11, 2023.

From the very next day i.e; on March 12, 2023 the patient was feeling uneasy because of continuous chest pain along with hiccup with low grade fever. On medical advice, the patient had X-ray of chest (PA view) that would show some chest cavity resulting the chest pain. The patient went for follow up check up on March 21, 2023 and March 23, 2023 when chest pain was reported. Ultimately, the CT chest was done on March 25, 2023 that diagnosed with well-defined encysted collection with internal heterogeneous content in the left lower lobe having broad base with pleura. Findings would suggest foreign body in the surgery area. X-ray report also observed, suggestive of encysted pleural effusion. However, Dr Sarkar and his entire team of CTVS did not go for any surgical intervention. Ultimately, on March 26, 2023 they prescribed for re-admission for **Left Thoracotomy and foreign body removal** and advised the complainant, the son of the patient, that further cost of treatment must be borne by the patient party either through SwasthyaSathi or Mediclaim or by cash.

The complainant approached the grievance cell of Medica on March 28, 2023 and lodged a formal complaint against Dr. Sarkar and his team of CTVS.

On March 29, 2023 the complainant had detailed discussion with Dr. Sarkar who is the Vice Chairman of Medica Superspeciality Hospital and during discussion the complainant got insulted by his remarks as alleged in the complaint. The complainant also approached the other officials who denied possibility of foreign body in the chest cavity. Subsequently, on April 1, 2023 Dr. Sarkar sent a whats app message that they had noticed a collection in the Chest X-ray and admitted possibility of existence of swab used during the course of operation. He advised the patient to remove the same at the earliest and offered free of cost post operative surgery for the same.

The complainant did not accede to such offer and approached SSKM hospital. Surgery was finally done on April 18, 2023 at SSKM when a single Gauze found therein was removed. The patient is now cured.

The complainant approached Commission by filing a formal complaint on August 7, 2024.

We forwarded the complaint to Medica for their response. Medica submitted an undated response through Mr. Komal Dashora, President (Compliance).

By the response, Medica admitted the incident and submitted that they offered free of cost curative surgery that the complainant did not avail. According to them, this incident was one of the first of its kind in their establishment. They

always follow all the pre operative and post operative checklists. Yet, this was “unintentional human error” and they expressed regret for the same.

HEARING

We heard the complaint at length on August 29, 2024 when both the parties prayed for further documents to be submitted. Hence, we reserved our judgment granting liberty to the CE to share OT Check list, statement of the OT sister who was involved in the process of maintaining count as well as OT records.

We also granted liberty to the complainant to share any further document if he so desired.

Accordingly, the complainant submitted X-ray plates that would conclusively show existence of the foreign body. However, this was not necessary as Medica, already in their response, admitted their fault.

As per our direction Medica submitted copy of Brother H. Jhonson Sing statement and copy of OT Swab count. According to Mr. H. Johnson 30 RO Swab was given by the floor nurse and he checked the RO Swab three times with the floor nurse and found it correct. He also took another two packets of RO swab containing 10 pieces that also he verified from the floor nurse. After the main surgery he asked the floor nurse to count it when the floor nurse told him that the count had been correctly done.

Swab count sent by Medica would show that everything was properly counted.

Letter dated September 09, 2024 sent by Sri Dashora on behalf of Medica would mention about three documents that would include statement of sister BaishakhiNath which was however, not sent to us as we find from the records. Be that as it may, the factum of existence of theSwab is now evident from the medical records as admitted by Medica. It might be a human error. However, when this had happened and pointed out at the time of check up the hospital should have been more vigilant and should have done the process free of cost.

From the records, it appears that the patient felt chest pain on March 12, 2023. When he went for check up he made a complaint aboutthe chest pain that was not properly looked into. A simple X-ray done by Medica could have located the foreign body. From the response, it is also clear that the issue was grave and the team could not have asked for payment of cost that created the problem.

By the grace of God, the patient is well. No damage was done to him. However, the irregularity would have a serious consequence. We intend to impose compensation on the CE.

The complaint was heard on August 29, 2024 and judgment was reserved. We considered the issue on the basis of the available records as also allowed the parties to submit further documents that they availed.

The complainant, while sending the X-ray platesthrough his forwarding letter, prayed for compensation of Rs. 1,00,00,000/- (Rupees one crore).

Since such prayer changed the scenario we placed the matter for further hearing on November 29, 2024.

The complainant was specifically asked about the reason for such prayer asking for a huge amount. The complainant submitted, he would pray for suitable compensation for the agony and sufferings of the patient due to the medical negligence referred to above.

Medica left it to the discretion of the Commission.

We have considered the issue as well as the quantum.

While we appreciate, there was gross negligence on the part of the hospital, considering the fact and circumstances discussed above particularly, no damage was done to the patient, we wish to impose a compensation of Rs. 5,00,000/- (Rupees Five lakhs). Complainant is directed to share his Bank details so that Medica can transfer the said sum on Rs. 5,00,000/- to him.

We also direct Medica to refund all costs for post operative consultations and investigations, if any realised by them, to the complainant.

The complaint is disposed of accordingly.

Sd/-

(ASHIM KUMAR BANERJEE)

We agree,

Sd/-

Dr. Sukumar Mukherjee,

Sd/-

Dr. Makhan Lal Saha,

Sd/-

Dr. Maitrayee Banerjee,

Sd/-

Smt. Madhabi Das.

Authenticated

[Signature]
Secretary
West Bengal Clinical Establishment
Regulatory Commission