

**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. Madhusudan Banerjee, Member.

Dr. Maitrayee Banerjee, Member.

Smt. Madhabi Das, Member.

COMPLAINT ID: KOL/2017/000108.

Mrs. Sujata Pandey.....Complainant.

-versus-

Medica Super Specialty Hospital & others.....Respondents.

Date of judgment: 2nd February, 2018

J U D G M E N T.

At the time of hearing of this case, the complainant was represented by her learned Counsel Mr. Somnath Gangopadhyay while the Clinical Establishment was represented by its authorized representative.

It appears from the medical file of the service recipient and other materials on record that on March 6, 2017, her husband Shri Sunil Pandey with severe chest pain was admitted at Medica Super Specialty Hospital at around 6.30am. At the emergency, it was diagnosed that he

had suffered multiple cardiac arrest due to pulse less rhythm. His initial ECG on arrival revealed massive anterior wall myocardial infarction with recurrent Ventricular tachycardia/Ventricular Fibrillation (VT/VF) and Echo revealed regional wall motion abnormality with reduced cardiac function. Thereafter, in CCU, he was taken to Cathlab where coronary angiogram revealed 100% thrombotic occlusion of Proximal LAD (Left Anterior Descending Coronary Artery). After obtaining high risk consent from patient's relatives, PTCA with stenting to LAD was done in the same sitting and flow was established, and then he was shifted back to ICU. Subsequently, on the same day around 7.30pm, a surgical procedure Embolectomy was done and treatment was continued and finally on March 13, 2017 at the early morning, he expired.

2. In the above back, the complainant has approached this Commission alleging negligence in treatment both on the part of the doctor and the Clinical Establishment and deficiency in service.

3. Admittedly, the treatment as well as the death of the husband of the complainant, which gave rise to the cause of action, occurred on March 13, 2017, whereas the West Bengal Clinical Establishment (Registration, Regulation Transparency) Act, 2017 came into force with effect from March 17, 2017, constituting the Commission and empowering it to adjudicate the issue and award compensation, if the charge of deficiency in patient care service on the part of the Clinical Establishment for irrational and unethical trade practice is established. The Act has not been given any retrospective effect. Therefore, any adjudication on the question of deficiency in patient care service or irrational and unethical trade practice relating to a cause of action which has been terminated much before the formation of the Commission does not at all arise.

4. The learned Counsel for the complainant has not disputed such settled position of law. He only submitted that already over the incident an FIR has been lodged and same has given rise to Purba Jadavpur P.S. Case No.31 dated 13/03/2017 under Section 304A/341, I.P.C. and the complainant's right to approach the Consumer Redressal Forum and the Medical Council and other forum for redressal of her grievance and necessary relief be preserved.

5. Undoubtedly, it needs no debate even if this complaint is not maintainable, nonetheless the complainant's right to approach the Consumer Redressal Forum and the Medical Council and other forum as the case may be, in accordance with law shall remain survived.
6. With the above observation and due to want of jurisdiction, this case stands closed.
7. Urgent Photostat copy of this order, if applied for, be given to the complainant by the office free of cost.

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. Madhusudan Banerjee, Member.

Sd/-
Dr. Maitrayee Banerjee, Member.

Sd/-
Smt. Madhabi Das, Member.

Authenticated

2/2/2018.
Secretary
W.B.C.E.R.C.
Kolkata-1

