

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

COMPLAINT ID: NPG/2017/000176.

Mr. Sudip MondalComplainant.

-versus-

OHIO Cardiology Associates IndiaRespondents.

Date of judgment: 16th February, 2018.

J U D G M E N T.

This is a case where the service recipient is himself is the complainant and participated in the adjudication in person. The case of the complainant as it transpired from his letter of complaint coupled with his oral submission before the Commission is as follows,

Accidentally, on July 5, 2017, the complainant fell on broken glass and suffered deep cut injuries on his right palm with profuse bleeding, the complainant immediately rushed to OHIO Hospital (hereinafter referred to as "OHIO"). At the emergency, he was attended and treated by Dr. Victor Saha (Treating Emergency Physician), who immediately injected 3 medicines and then referred him to the

radiology department for X-ray of his right wrist. Then the X-ray was done by Dr. Nandini Thakur Jha, the radiologist and she told that everything was normal. He with the X-ray report and the X-ray plate, went back to the emergency. Dr. Victor Saha seen the X-ray report and told him that there was no fracture and there was no glass particles found on the site of the injury and noted down the same in the prescription. Dr. Victor Saha then dressed his wounds and prescribing a few medicine, discharged him. He was asked to come back to the emergency in case of any further complication.

According to the complainant, since he has been suffering from severe pain on his right palm and in spite of having the medicines prescribed by the doctors of OHIO, after a few weeks, he went to Patharghata Primary Health Centre and they detected presence of foreign body in his right palm from the X-ray plate and after surgical incision, the foreign body was removed.

For his treatment at OHIO, he was charged Rs.1,460/-. The complainant claimed that due to the negligence in treatment and deficiency in service he has suffered not only pain and mental agony but also had to endure severe pain on his palm and was unable to attend his normal pursuits till the foreign body was removed on August 4, 2017 by the doctors of the Primary Health Centre.

2. Immediately, upon receipt of the complaint, notice was issued against the OHIO seeking their response against the aforesaid complaint and was also asked to submit the medical file of the service recipient.

3. In response to the notice OHIO submitted its response in writing and such response was endorsed by 3 doctors viz, Dr. Victor Saha, Treating Emergency Physician, Dr. Nandini Thakur Jha, Radiologist and Dr. Rahul Anand, Consultant and in charge, Dept of Accident & Emergency Medicine. There response was quite short and reproduced, as it is, herein below,

“Mr. Sudip Mondal was brought to our Emergency department with a cut injury, swelling and bleeding in the right hand on 05.07.2017.

Preliminary treatment was provided and X-ray was advised by our Emergency physician. No definite obvious abnormality was detected in the X-ray. Patient was given preliminary treatment and was advised to attend Emergency if needed on a SOS basis.

Patient left and did not leave any opportunity for further investigation and management as he never followed up.”

4. At the time of hearing, the Members having medical background confronted the radiologist, Dr. Nandini Thakur Jha with the X-ray plate and the report in question. She has not disputed that the said X-ray was done by her and the report was of her and she gave the report after considering the X-ray plate in question. She, however, admitted that X-ray plate shows presence of a foreign body inside the palm of the complainant and on the face of the X-ray plate which is very much identifiable. However, she contended as the requisition was only for X-ray of right wrist along with fingers in stretch position, AP and Lateral, she made no further study and unfortunately, missed the foreign body and could not provide any observation about its presence.

5. Dr. Victor Saha was also confronted with his note of requisition recorded in the prescription. He has not disputed that although the patient came with the complaint of sustaining injury falling on broken glasses still by mistake, while referring him for X-ray did not specifically asked the radiologist to ascertain whether any foreign particle remain inserted inside the wounds. He then contended that even if such requisition is not noted in his prescription, still the radiologist is supposed to give her impression about the presence of a foreign body at the site, which is evident from the X-ray plate. He, however, could not explain how he also missed the same.

6. The Members having medical background independently examined the X-ray plate and according to them, presence of foreign body is very much evident.

7. Going through the medical reports viz the prescription of Dr. Victor Saha, the Treating Emergency Physician and the X-ray report by the Radiologist Dr. Nandini Thakur Jha, we find as follows,

Dr. Saha, after examining the patient, advised injections, viz. TT (0.5) IM- Stat, Dynapar AQ IV-Stat, Rantac 1 ample IV-Stat. He also referred the patient to the radiology department of OHIO and made a requisition for X-ray of right wrist with all fingers in stretched position AP and Lateral.

Following such requisition, Dr. Nandini Thakur Jha, a doctor also attached to OHIO performed the X-ray procedure and furnished the report in the following manner,

OBSERVATION

- a) The joint space & bony alignment is maintained.
- b) No lytic or sclerotic lesion is noted.
- c) No fracture seen.
- d) No obvious soft tissue swelling seen.

IMPRESSION: Normal Study.

8. The facts as above, clearly depicts that both the doctors, Dr. Victor Saha, the Treating Emergency Physician and the Radiologist, Dr. Nandini Thakur Jha are in fault. None of them cannot deny their independent responsibility. When a patient comes to a doctor with bleeding injuries, with a complaint that such injury was sustained by falling on a broken glass, he should not only made requisition for X-ray of site for ascertaining whether there was any fracture or not at the same time in the backdrop of the case history he ought to have included his requisition the query whether any foreign body remain inserted or not. After X-ray when the plate with the report was shown to the treating doctor and he missed the presence of foreign particle at the injury site and noted in his prescription "*no bony abnormalities*" the only logical conclusion would be that he went by the report and never himself looked at the X-ray report to form his independent opinion. He, therefore, certainly deviated from his duty which is bestowed on a medical practitioner when he is acting in his professional capacity. Similar is the position with the radiologist, Dr. Nandini Thakur Jha. Merely because there was no requisition by the doctor, who referred the patient as to whether there was any foreign particle remain inserted at the injury site and requisition was for ascertaining whether there was any fracture or not, still no radiologist is absolved of his/her

duty to report about the presence of foreign particles when that reflects that from the X-ray plate itself. A radiologist, according to the medical protocol, is also bound to interact with the patient on the point how the injury was sustained.

9. In the above backdrop, both the doctors, Dr. Victor Saha and Dr. Nandini Thakur Jha are liable for deficiency in patient care service. The patient is not their direct patient and he went to the Clinical Establishment OHIO and both the doctors are in regular employment of the OHIO and in its pay role. Therefore, OHIO also cannot be exonerated of its liability of deficiency in patient care service.

10. In this case, due to the fault of the above doctors, the service recipient, during the space of 30 days (the patient was examined at OHIO on July 5, 2017 and the glass particle, a foreign body was removed from his palm at Patharghata Primary Health Centre on August 4, 2017) has to suffer severe bodily pain and was unable to follow his ordinary pursuits. Before the Commission, it was claimed by the complainant that he has to remain absent from his office and was on leave until the mistake was rectified by the doctors at Primary Health Centre which was corroborated by his colleague Suman Dolui and not disputed by the Clinical Establishment.

11. Undoubtedly, in the above backdrop a case for awarding compensation has been made out. Accordingly, it is directed that the Clinical Establishment, OHIO, shall pay a sum of Rs.25,000/- by an account payee demand draft to the complainant Mr. Sudip Mondal within 15 days from this day.

12. Now we conclude, with a note of caution that henceforth the Clinical Establishment be careful in patient care service which they are providing on payment and ensure that this kind of mistake must not be repeated by its regular employee or through whom the service is rendered to its recipient.

Sd/-

Justice Ashim Kumar Roy
Chairperson

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Authenticated

16/2/2018

Secretary
W.B.C.E.R.C.
Kolkata-1

