

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

Dr. Madhusudan Banerjee, Member.

Dr. Maitrayee Banerjee, Member.

COMPLAINT ID: SPG/2017/000045.

Ms. Papia Bodhak.....Complainant.

-versus-

Belle Vue Clinic & others.....Respondents.

Date of judgment: 7th March, 2018.

J U D G M E N T.

The complainant is the daughter of the service recipient Lt. Subal Chandra Bodhak who expired at Bell View Clinic, Kolkata (hereinafter referred to as "the said hospital") on April 6, 2017, where he underwent a surgical operation, during the postoperative period.

2. The complainant alleging that her father died due to negligence in treatment by the doctors at the said hospital, approached this Hon'ble Commission claiming compensation.

In the letter of complaint, it was inter alia, alleged that on March 13, 2017, her father was admitted at the said hospital under Dr. Sarfaraz Jalil Baig. Initially, they were told that around an expenditure of Rs.4 lakh might be incurred for the treatment but subsequently, the treatment cost started rising day by day and reached around Rs.10 lakhs. Although, her father was finally succumbed to his untimely death. The complainant's father was first operated on

March 20, 2017 and after the operation, she was told by Dr. Baig that operation was successful and his condition was stable. Thereafter, suddenly the condition of her father started deteriorating and she was informed by one Pallavi over phone that her father has suffered burst abdomen. Thereafter, the abdomen of her father was wrapped with a plastic cover. Even knowing such critical condition of her father, Dr. Baig left for USA. The condition of her father then deteriorated. Thereafter, her father was removed from General Ward to CCU. On April 4, 2017, her father's operation site was repaired with final stitch. As his condition was deteriorating fast, he was shifted to ventilation and on April 6, 2017, his father died at the said hospital.

Prior to admission of her father at Belle Vue Clinic, he was treated at Anandalok Hospital, Salt Lake under the care of Dr. Joy Mukherjee and, thereafter at AMRI on March 2, 2017 he underwent ERCP, conducted by Dr. Gautam Das. On March 25, 2017 when her father was at Bell View Clinic, Dr. Baig, in presence of her father, told the complainant that as the nursing home is not receiving payment, administration of medicines have been stopped. Listening that, her father started crying. Dr. Baig pressurized them in 3 ways i.e. either shift to Life Line or to take him back to their home and to make payment on daily basis. The wife of Dr. Baig, Ms. Laila Baig used to call her mother over phone and insisted her to make payment on daily basis. Dr. Baig also told them that at the said hospital the prices of medicines are high and, therefore, they should buy it from the market. It was urged that immediate steps be taken against the said hospital for deficiency in service and negligence by Dr. Baig and other doctors of his team and sufficient compensation be awarded to them.

3. Immediately, upon receipt of the above complaint, the Commission forwarded the letter of complaint to the Clinical Establishment and called for its response and also directed to deposit the Bed Head Tickets and the bill details.

4. a) In response to the allegation made against the Clinical Establishment, following reply has been made:-

"Mr. Subal Chandra Bodhak, aged about 69 years, came to the hospital on 07.03.2017 with obstructive jaundice and malnourishment with a provisional diagnosis of pancreatic cancer. ERCP and stenting had been done outside. A CT scan was advised which revealed a mass in the pancreas. The tumor markers were highly suggestive of a cancer. In view of poor nutrition and high jaundice, patient was advised for a surgery at later date after proper optimization of the patient's condition. Meanwhile, high protein diet at home was prescribed. Patient consulted the hospital again with high fever 7 chills on 13.03.2017. Investigations revealed high total white cell counts suggestive of cholangitis which is an infection of the biliary tract. Patient was admitted and treated with antibiotics and nutritional supplements. The patient was planned for surgery but later it was postponed in view of very low albumin. He was again put on very high protein during hospitalization. After parameters reached an acceptable level, patient was planned for surgery on 20.03.2017.

The patient and family were counseled for Whipple's procedure. Dr. Sarfaraz Baig had personally explained that it is a major surgical procedure that involved removal of the head of the pancreas, duodenum and parts of stomach, jejunum and bile duct. It was further communicated that it carries a 2-3% mortality rate and 40% complication rate and also that it was the only curative option. They were given an estimated budget of approximately Rs.4.5 lakh and were clearly explained that the costs will go up in case of any complications. They were also counseled about the outcome if the patient did not undergo treatment and that the survival of untreated pancreatic cancers is short. The patient party agreed to go ahead with the treatment accepting the risks and costs involved. A written informed consent was taken stating the same.

The surgery was performed by a team of surgeons comprising of Dr. Sarfaraz Baig, MS FRCS having 17 years of practice, Dr. Ajay Mandal, MS DNB (GI Surgery) having 14 years of practice and Dr. Pallawi Priya DNB (General Surgery).

The surgery was uneventful and the desired objectives of the surgery was achieved. Prospectively, he was stable.

On the third day, after surgery, the patient showed evidence of pancreatic leak (pancreatic secretion coming out of the tube drain) which was managed accordingly. Wound infection was noted which was treated with regular dressings. The stent culture grew multiple organisms resistant to most of the antibiotics and the antibiotics were changed accordingly. Even Colistin, and antibiotic used as a last resort for infections, was employed. Both enteral and parenteral nutritional support were provided along with the medications. Histopathology report revealed a pancreatic adenocarcinoma. The patient and relatives were informed of the same and were counseled about the expected prolonged course of hospital stay and guarded prognosis in view of continued infection. Patient had a burst abdomen on 01.04.2017 for which dressing and temporary abdominal closure (Laparostomy) was done on the same day in OT.

Patient developed tachycardia on 03.04.2017 due to continued sepsis and was shifted to ICU and was given supportive treatment. After the patient was stable, closure of wound was done in OT on 04.04.2017. Gradually because of continued sepsis, patient deteriorated and he developed hypotension. Despite maximal support, patient had a cardiac arrest on 06.04.2017 morning but responded to resuscitation. However, he suffered a second cardiac arrest on the same day from which he could not be revived and was declared dead.

Dr. Baig, who is working in a tertiary care center where referrals of complicated cases are routine. He is an academician too and have published a paper on Acute Pancreatitis in Tropical Gastroenterology, an indexed journal, in 2008 amongst other papers.

Further, it be noted that the patient had an emergency admission for fever on 13.03.2017 and Dr. Baig scheduled to departure on 29.03.2017. As such, there was 16 days in hand. After his departure, his colleague, Dr. Ajay Mondal, hepatobiliary surgeon, who was taking care of the patient since the beginning of treatment, was in charge of the medical care. Dr. Ajay Mandal is adequately qualified to manage such cases independently. Further, Dr. Baig was in touch with the relatives of the patient as well as with his team while in USA.

b) In addition to above, the hospital authority and treating doctor Sarfaraz Baig dealt with the allegations made by the complainant, point wise,

No guarantees/ assurances regarding the outcome of the treatment were given by either the surgeon or the Hospital. They were clearly explained about all the complications including mortality. We have a written informed consent written by patient's relatives themselves stating the same.

Only an approximate estimate was given as stated above and they were explained regarding possibility of the increased costs in case of any complications and they gave a written consent accepting the same before undertaking surgery.

The surgery was performed by a team of qualified doctors.

All the doctors of the operating team (Dr Sarfaraz Baig, Dr Ajay Mandal, Dr Pallawi Priya) were involved in patient daily. Dr Sarfaraz Baig and Dr Ajay Mandal were actively involved in the postoperative care till day 10 of surgery. From Day 11, Dr Ajay Mandal MS, DNB (GI Surgery), Fellowship (HPB Surgery), who is a superspecialist hepatobiliary surgeon, was in-charge and continued seeing the patient daily. At all points during the course of hospital stay, the patient was seen and treated by a team of qualified doctors. Dr Sarfaraz Baig's travel in no way affected the patient's course, treatment and outcome. In addition, they were duly informed about the upcoming travel of Dr Baig and that is documented in the treatment sheets.

Closing the abdomen with a transparent sterile plastic sheet is called laparostoma, which is the procedure of choice in case of burst abdomen. This happened on 1/4/17 (day 13 of surgery).

The patient was shifted to ICU as per norms when the patient developed tachycardia on Doctors' discretion and not after pleading by the patient's relatives as alleged. We have records stating the same.

Patient's relative expressed their difficulty in financial matters. Patient was receiving many high-end antibiotics as per the culture report of the stent. To ease the burden they were given the option to purchase medicines from outside as in the hospitals the consumables are charged at the MRP. This fact is being misrepresented as stopping treatment which was not

done at any point. Our records suggest the same. All medicines were continuously supplied by the hospital.

To further ease their burden after they repeatedly expressed inability to pay, they were given the option of shifting the patient to Lifeline Nursing Home where the treatment protocol and the team of doctors would remain the same but costs were lesser due to infrastructure issues. This advice is being misrepresented by the relatives as putting pressure on them for payment. This was never done either by the Doctors or by Hospital Authorities excepting in normal course of working.

The two procedures in postoperative period were in accordance with the latest medical science guidelines and are standard steps of management in such postoperative course. Avoidance of the procedure would cause harm to the patient. The patient and relatives were explained about the need of the procedure and they wrote a consent for the same. Our Records corroborate with the same.

After being informed by the billing department about the pending dues in excess of Rs 2,00,000 patient relatives were requested to make a minimum deposit as per their convenience which is a standard practice followed by all hospitals. At no point whatsoever, they were pressurized either by Dr Baig or any of the other team members or the hospital. The treating doctors were unaware of the bill of the hospital and had not been involved in its recovery as alleged.

The patient's relatives had made a G.D. Entry No.464 at 06.04.17 at Shakespeare Sarani Police Station.

The patient's relatives did not ask the Management of the BHT (Bed Head Ticket). As per practice medical reports are given to the patients forth with relatives against requisition and acknowledgement. They are never refused. The Xerox of Bed Head Ticket was taken by the Investigation Officer (IO) Sri Raj Kumar Mishra from Belle Vue Clinic on 11.04.17 as per Xerox of acknowledgment enclosed against Shakespeare Sarani PS GD Entry No 464 dated 06.04.17

The hospital never refuse anyone for copy of BHT and we always provide the same. They can always collect from us against arequisition/request and we will positively proved the same. Incidentally Belle vue Clinic was informed by Shakespeare sarani Plice Authorities that the patient's relatives can always collect the Bed Head Ticket from them. We are unnecessarily being dragged into this controversy by the patient's relatives.

However, one complete set of BHT was handed over to the relatives on 08.05.2017 even though we have still not received any written requisition from them.

The question of medical negligence does not arise as all the treatment was carried out by a team of qualified and experienced doctors, with proer consent, within the guidelines of current medical science, and with promptness and sincerity. We have all the documentation to corroborate the same.

It is unfortunate that despite manimal efforts by the doctors and the hospital, patient succumbed to what was a fomiddable illness of pancreatic cancer. We sympathise with the patient's relatives for their loss. Losing the patient after trying so hard on our part is very stressful for the doctors and the hospital as well. However, there was no negligence in medical treatment and we refute the allegations made by the Ms Papiya Bodhak, Ms Nabonita Halder (Bodhak), and Ms Sangita Das (Bodhak).

The Shakespeare Sarani Police Authorities, whom patient's relatives had complined and made a G.D felt it prudent to send the body for post mortem and hence the body for was handed over to the Police Authorities and after Post Mortem was done the body was handed over the relatives as per norms. The clinic did not have any role to play looking into the circumstances.

All charges against the Doctor's and Clinic are denied from start till end.

The Patient's relatives were assured all along by the by the Doctors and Clinic continuation of treatment. The patient's relative wer making payment frequently and the last two payments were made by them on 4th April, 2017 (Rs.60,000/-) amd 5th April, 2017 (Rs.50,000/-) also. But

they did not pay the final amount of Rs.1,31,598/- after preparation of the final bill was done. Thus the said amount of Rs.1, 31, 598/- continues to remain outstanding out of the total bill of Rs.7, 96,598/- and not for Rs.10lacs as stated by them for stay from 13.3.2017 till 06.04.2017 (25days) which includes Doctor's fees of Rs.1,62,800/-, OT and OT related charges Rs.76,100/- and Pharmacy of Rs. 3,45,974/- leaving balance under different heads including Rs.85,500/- Accommodation Charges.

The Clinic had issued a Press Release on 06.04.2017, copy enclosed, as soon as the patient's relatives called a press meet at the entrance of the Clinic thus creating a gathering of Press/media to malign the Clinic's goodwill. The Press was satisfied with the Press release.

On 4th April, 2017 the Patient's relatives showed their inability to make further payment. They were explained that from Belle Vue's side Belle Vue will not insist for payment and Belle Vue Clinic will continue the treatment to best possible manner as before leaving them to decide about the payment issue. Belle advised the Doctors to continue the treatment as before and to the entire satisfaction of all and in total interest of the patient on their own.

The relatives were very happy and fully satisfied with the Clinic's decisions from time to time and thereafter deposited Rs.60,000/- on 4th April, 2017 and Rs. 50,000/- on 5th April, 2017 as stated above.

On 6th and 7th April, 2017 the Patient's relatives did not come to the Police station or the hospital to fetch the body. On suggestion of the police they kept the body at the Clinic's Mortuary on 6th and on 7th April 2017 the Police decided to take the body from the Clinic for Post Mortem at 1.40pm. by their own vehicle. We obliged and handed over the body to the police.

On 7th April, 2017 the patient's relative came to the Clinic at 3pm. Along with others to collect the body after it had been taken by the Police already when the Clinic requested them to get in touch with the Shakespeare Sarani Police station."

5. On the face of the allegations made by the complainant in writing, we find that same is directed essentially against Dr. Baig and his wife under whom the complainant's father was admitted at the said hospital. So far as any complaint of medical negligence against any medical practitioner/professional is concerned, same is to be dealt with by the respective State Medical Council as provided in Section 38 sub-Section 1 Clause II of the West Bengal Clinical Establishment (Registration, Regulation & Transparency) Act, 2017. Therefore, adjudication as regards to the same is beyond our jurisdiction.

Now, coming to the case against the Clinical Establishment, we find that the complainant at the fag end of her complaint made a bald allegation against the Clinical Establishment to the extent that due to the dereliction of duty by the persons who were in charge of managing the affairs of the said clinic and top of everything due to the negligence in treatment by Dr. Baig, finally her father died. However, no specific allegation has been made about the nature of deficiency in patient care service which was occasioned on the part of the Clinical Establishment, even at the time of hearing.

6. Although, no specific allegation has been made against the Clinical Establishment, for ends of justice, we on our own took an initiative to find out from the medical file of the patient as also from the bills, whether there was at all any deficiency in patient care service or overbilling on the part of the Clinical Establishment.

We find from the Bed Head Ticket and clinical notes and other relevant materials that no case of deficiency in patient care service is manifest against the Clinical Establishment. Now, considering the bill details, we find that not only the service recipient was charged on account of nursing services but also he was charged for the meal of those nursing staffs. We are of the opinion that this is totally undesirable and not at all justified. We further find that in addition to bed charge, the hospital authority also levied separate charge for the RMO who are admittedly in their pay role.

Subsequently, the Clinical Establishment in writing conveyed the Commission that they are no longer charging the patient parties for private sister's meals and the fees for the RMO.

In addition to that, we have been further informed that they do not charge any patient party for handling insurance claim and for supplying medical records and has discontinued charging a patient on account of disinfection of the operation theatre.

7. Last but not least the Commission has also been informed in writing that out of the total bill for treatment of the patient amounting to Rs.7,96,598/-, a sum of Rs.665000/- has been paid by the patient party leaving an outstanding of Rs.131598/-. However, they have neither pressurized the patient party for payment of the balance amount nor intend to do that.

8. In the above backdrop, we do not find any merit in the matter and the case stands closed.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Dr. Maitrayee Banerjee, Member.

Authenticated.

7/9/2018

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

