

Office of the West Bengal Clinical Establishment Regulatory Commission

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Case Reference:INT/KOL/2021/506

Present: Justice Ashim Kumar Banerjee (Retired), Chairman

Dr. Maitrayee Banerjee,

Smt. Madhabi Das.

Ms. Sudipta Kumar Khan ..... Complainant

Vs

Seba Magnum PPL Hospital, Salt Lake.....Respondent/ Respondents

Heard on: October 10,2025,

Judgment on: November 19, 2025.

## COMPLAINT & REDRESSAL

On August 21, 2021 Dulal Chandra Ghosh, aged about 73 years old, was admitted at SebaMagnam PPL Hospital with the history of cerebral stroke and other co-morbidities. Mr. Ghosh was earlier admitted at Rit-tik Hospital wherefrom he was transferred to Seba. The patient was admitted under care of Dr. Arup Dutta. According to the complainant, the patient was otherwise mobile and attended the

hospital by walking. According to the CE, on the next day of admission on August 22, 2021 Dr.Kartik Biswas, the attending physician noticed a swelling on the hip joint and advised X-ray that was done on August 25, 2021 when it was found that the patient had fracture in neck of femur. According to the complainant, neither at Rit-tiknor at Seba where the patient was evaluated by the concerned doctor, it was never recorded that the patient had neck of femur. Hence,the same must have been caused during hospitalization and the CE was responsible for the same. The CE, on the contrary,contended that there was no history of fall in the hospital however, since it was noticed through X-ray on the 5<sup>th</sup>day of admission they got the surgery done by Dr. Amit Guha who did not charge for the same. An impression was given by the CE that the surgery had been done free of cost.

The complainant also raised issue with regard to bedsore that the hospital could not give any plausible explanation before us at the first hearing.

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There had been some irregularity in the bill noticed by us. The hospital billed Rs. 4,15,069.35/-. After giving discount of Rs.53,069/-, the bill was settled at 3.62 lakhs that the complainant had to pay. .

Considering the issue and taking a sumtotal of the situation, we granted further discount of Rs.1,00,000/- and asked the hospital to refund the same by monthly instalments.

### **WRIT PROCEEDING**

Being aggrieved, the complainant approached the Hon'ble High Court at Kolkata by filing a writ petition. The Hon'ble High Court remanded the matter back to the Commission for hearing afresh.

The relevant paragraph of the order of the Hon'ble High Court being paragraph 17 is quoted below:-

*"In view of the above, I am inclined to remit the matter back to the Commission. The Commission shall independently assess the amount of compensation and pass an appropriate order in accordance with the relevant provisions of law and in light of the observations made in this order. However, before taking any final decision regarding the*

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*quantum of compensation, an opportunity of hearing shall be afforded to the representatives of both the Hospital and the petitioner”.*

### **HEARING ON REMAND**

In pursuance of the said directions we placed this matter for hearing on September 18, 2025 when the same was adjourned as none of the parties were ready to argue the matter. On their request, the matter was adjourned till October 10, 2025. We heard the parties afresh on October 10, 2025.

### **RIVAL CONTENTIONS MR. RAJIB SAHA (ADVOCATE)**

Mr. Rajib Saha, representing the complainant, would contend, the patient came on his own to the hospital by walking at the time of admission. Medical evaluation by the concerned Doctor, did not mention about any fracture. It was noticed by the complainant for the first time on the 5<sup>th</sup> day of admission that the patient had swelling in his hip joint and on being pointed out to the concerned Doctor, X-ray was done. Since it was noticed on the 5<sup>th</sup> day of admission it should be presumed, the fracture had happened while undergoing treatment at the

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CE and CE would be held responsible for the same. Moreover, at the time of admission, an idea was given that the expense would be within the range of Rs. 80,000/-to 90,000/- whereas the bill ultimately came to 4.15 lakhs and after discount they had to pay Rs.3.62 lakhs.

**MR. NILAMBAR PAUL**

The Learned Advocate of the CE, Mr. Nilambar Paul, would contend, swelling was noticed immediately on admission as would appear from the response given by the CE and X-ray was done. The concerned Orthopedic Surgeon waived his fees. Although there is no definite proof that the injury caused during treatment the hospital took up on themselves the responsibility and got the surgery done free of cost. Sum of Rs.55,000/- was charged only for implant and not for the entire surgery cost. They did not pay Rs. 1 lac as directed by the earlier order dated July 28, 2025, in view of the pendency of the writ petition before the Hon'ble High Court.

We pointed out discrepancy in the bill to Mr. Paul however, we did not get any plausible explanation for the excess amount charged by the CE.

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## OBSERVATION OF THE HON'BLE HIGH COURT

Before we go into the issue we need to highlight the observations made by the Hon'ble High Court. The core issue that would appear from the said order are tabulated hereinafter :-

- i) The hospital authority took three days to perform the X-ray and did not offer any satisfactory explanation for the delay.
- ii) Due to such fracture and the surgery the patient had his stay prolonged.
- iii) Reason is the lifeline of the order. The order of the Commission is devoid of such reasoning.
- iv) The clarification of the amount was without any reason. Moreover the "discount" used in the order of the Commission did not find any place in the relevant statute.
- v) The order was non-speaking.
- vi) Incident of bed sore indicates deficiency in service.
- vii) The Commission had taken a lenient view regarding mode of payment.

## OUR VIEW

Section 33 and Section 38 of the West Bengal Clinical

Establishments (Registration, Regulation and Transparency) Act 2017 for giving power to redress the grievance of the persons aggrieved.

Section 33 would have a guideline to assess the compensation after coming to a conclusion that the damaged was caused to the patient by the Hospital. The said provision would interalia provide, *while providing service if any injury is caused to the patient due to such negligence he would be entitled to a compensation; Rs. 3,00,000/- in case of simple injury, Rs. 5,00,000/- in case of grievous injury and Rs. 10,00,000/- or more, in case of death whereas Section 38 would inter-alia provide that the Commission shall examine and consider complaints regarding hospital service and allied matters and adjudicate, compensate and pass such other orders as deemed appropriate.*

The said Act of 2017 is a social welfare legislation and we always try to mould the relief in favour of the victim in case of any deficiency of the CE. There are cases where despite hospital negligence, the patient does not suffer any injury we consider the entire backdrop and use our prudence and discretion and

accordingly assess the compensations and direct the CE to pay the same. While doing so, we also take into account the version of the complainant as well as explanation offered by the CE.

His Lordship was pleased to direct us to hear the matter afresh and independently assess the compensation.

Keeping in view of the observation of His Lordship let us now consider the present case.

The complainant has two main grievances:-

- i) The fracture must have been caused at the CE hence, they must be held responsible for the same.
- ii) Bedsore occurred during treatment that indicates deficiency of the CE.

### **FRACTURE**

We find, in the admission record swelling was not recorded. However, the definite assertion of the complainant that the fracture had occurred during treatment, was not contemporaneously documented or supported by any other circumstantial evidence. X-ray was done on the 5th day of admission when fracture was established.

At the time of earlier hearing, the CE gave us an impression, since the fracture was located after admission they took up on themselves the responsibility and got the surgery done free of cost. Such statement was not confronted by the complainant.

We Admit, we overlooked the fact that a sum of Rs. 55,000/- had been charged on account of "package surgery cost" as would appear from the bill. Moreover, a sum of Rs. 8,000/- was charged by the Orthopedic Surgeon on the same day as would appear from the bill that we find on a close scrutiny of the bill at the time of second hearing.

### **BEDSORE**

Bedsore could not be said to be a negligence of the hospital as it can happen in case of any immobile patient. Aged person having prolonged stay at the hospital might have bedsore however, it was the duty of the hospital through their nursing staff to take care of such bedsore.

None of the two issues would come within the scope of Section 33 of the Act of 2017 where a definite conclusion has to be drawn that the negligence caused injury or death to the patient. We thus apply

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Section 38 to pass an appropriate order ameliorating the grievance of the victim.

### **CONCLUSION**

The victim, through the complainant, prayed for Rs. 1.5 lakhs as would appear from the order dated November 8, 2021.

We assess the compensation for Rs. 1.5 lakhs as for by the complainant. We direct the CE to pay the said sum to the complainant at once.

The complaint is disposed of accordingly.

Sd/-

**(ASHIM KUMAR BANERJEE)**

We agree,

Sd/-

**Dr. Maitrayee Banerjee**

Sd/-

**Smt. Madhabi Das**

*Authenticated*  
*M.D.*

**Secretary**  
**West Bengal Clinical Establishment**  
**Regulatory Commission**

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