

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

Dr. Gopal Krishna Dhali, Member.

Dr. Madhusudan Banerjee, Member.

COMPLAINT ID: KOL/2017/000261.

Mr. Rajnish KumarComplainant.

-versus-

Apollo Clinic, Bansdrone & others.....Respondents.

Date of judgment: 16th March, 2018.

J U D G M E N T.

In his letter of complaint, the complainant Rajnish Kumar alleged as follows.

On June 22, 2017, the complainant with pain in loin to groin, reported to doctor, Dr. Amitava Chatterjee at Sri Aurobindo Seva Kendra. He after examining him advised for USG abdomen with post void residual urine in bladder. In addition to that there was also a advice for Straight X ray of abdomen – erect and supine view. On June 23, 2017, USG was done at Apollo Clinic, Bansdrone by Dr. Anindita Mukherjee and according to that report, there was nothing abnormal. Since on July 2, 2017 pain recurred, the complainant had been to Apollo Clinic, Bansdrone and consulted Dr. Sobhon Sarkar who after considering the old report advice for few other tests. Thereafter, Dr. Sobhon Sarkar asked him to consult urologist. In the meanwhile the complainant went to his home town, Patna where Dr. Ajit Kumar was consulted and he advised for USG of abdomen. The USG was done and 3 stones, 1.8mm, 3.3mm and 5mm were

found in his kidney. This USG was conducted in Shahi Hospital and Stone Clinic, Patna on 07.07.2017. After coming back to Kolkata, the complainant again had been to Apollo Clinic, Bansdrone to point out their mistake when he was asked to meet the concerned Radiologist. Thereafter, on 17th July he met Dr. Anindita Mukherjee, who performed the first USG procedure and Dr. Mukherjee intended to perform USG procedure for second time. Accordingly, second USG was done at Apollo and presence of 2 stones was diagnosed. Dr. Mukherjee told the complainant that it was not her mistake and it is quite common to miss stones due to non-visibility. Thereafter, he was asked to come in the evening to collect the second report but he was told that they will not charge anything for the second procedure but refused to return the first report. Finally, he managed to get back the first report. Although he was told by the Centre Head, Apollo Clinic that there was no negligence but he failed to comprehend as to how a test report was found to be normal, when in the same test done within 2/3 weeks, presence of stones were detected. According to him, this is a clear case of negligence and due to that he has to suffer not only physical pain but also mental trauma and agony.

During the course of hearing, the complainant in addition to above contended that this is a clear case of negligence and for his physical suffering, pain and agony, he ought to be compensated.

2. Immediately a copy of the complaint was sent to the Clinical Establishment seeking its response as well as that of the Radiologist who conducted the USG. In response to that, a reply was submitted in the form of affidavit.

3. In her reply, Dr. Anindita Mukherjee has not disputed that at Apollo on June 23, 2017 she performed USG of KUB Region of the complainant, who came with a complaint of right side abdominal pain and she performed USG but could not detect any stone in either of the kidney. At the time of procedure, she had only the prescription of the doctor and no x-ray report was shown to her. The complainant again came back to Apollo on July 17, 2017 and complained that a center at Patna found right renal stones which she missed. She again conducted scan and found that there is right sided Hydronephrosis (which was not present in previous scan) with a tiny stone (3.3mm) in right kidney and another stone is impacted (5.5mm) at right VUJ. She then explained to the complainant why in the previous scan she could not detect any stone

in right kidney and it may happen in USG as the kidney was not dilated at that time. Since there was right sided Hydronephrosis on July 17, 2017, it was clearly visible and in due course one stone came down via ureter and reached right Vescicoueteric junction which was also missed at Patna.

According to her, non-visibility of stone is quite common as renal sinus is echogenic and very often tiny calculi are not seen in USG plate and there is no negligence.

Dr. Mukherjee in support of her contention, relied on an article *Urinary Calculi Imaging* author Dr. J. Kevin Smith published in Medscape (a website providing access to authenticated medical information).

She denied the allegation that she refused to hand over the first x-ray plate to the complainant. Lastly, it is said that she was working as a sonologist for last 23 years.

4. Heard the parties. Considered their respective submissions. Perused the letter of complaint and the reply filed by the concerned doctor together with the medical literature relied upon by her.

5. It is not disputed by the concerned Radiologist, Dr. Mukherjee that on June 22, 2017 she conducted USG of KUB Region of the complainant and no stone was detected in either kidney and after 25 days on July 17, 2017 she repeated the same procedure on the service recipient, for the second time, she found that there is right sided Hydronephrosis (which was not present in previous scan) with a tiny stone (3.3mm) in right kidney and another stone was impacted (5.5mm) at right VUJ.

In her defense, Dr. Mukherjee pleaded, on the first occasion, no x-ray report was shown to her except one prescription by the complainant. It was vehemently urged, non-detection of tiny stone in kidney in the case in hand is quite common due to the reason kidney was not dilated. To justify that non-visibility of stone is quite common as renal sinus is echogenic and very often tiny calculi are not seen in USG plate and this is not negligence, reliance placed on medical article *Urinary Calculi Imaging* author Dr. J. Kevin Smith published in Medscape.

6. In this regard, it be noted in support of her eligibility to conduct the USG in question Dr Mukherjee relied on a *Certificate on Competency Based Evaluation Test under Abdomino-Pelvic Ultra Sonography: Level One for MBBS Doctors* issued by The West Bengal University of Health Sciences.

The said certificate was referred to The West Bengal University of Health Sciences. The Registrar in his reply communicated as follows,

"The copy of the certificate, attached with your mail dated 22/02/2018, issued to Dr. Anindita Mukherjee, bearing Roll No. 164410009, is correct and genuine and entitles the candidate to perform ultra sonography of the KUB region of the abdomen in addition to pregnancy relation ones".

7. Now having heard the parties and considering their respective submission together with the medical literature relied upon by them, the Commission is of the opinion that the deficiency on the part of the sonologist, who is under the employment of the hospital cannot be ruled out.

8. In this case, admittedly, X-ray abdomen was done after the USG and at the same clinic simultaneously. It is categorically claimed by the doctor concerned that at the time of USG beside the prescription, no other medical paper was with her and she saw the X-ray plate after the USG procedure was over. By such assertion, she might have tried to say that if the X-ray plate was available to her before the USG she might not have missed the stone in the kidney of the service recipient. If that be so, we feel that she should have either insisted for X-ray first then USG or should have give the final impression after considering the findings of the X-ray and if necessary to repeat the USG to reach to a just decision about the correct medical condition of the patient. She claimed that at the time of USG, she had the prescription. We find from the prescription that there were sufficient indications, what prompted the doctor to prescribe X-ray and USG with other blood tests for the service recipient and what he intended to ascertain from those tests. In this case, 2 USGs were done within a gap of 2 weeks. It is quite unlikely that while the second USG detected stones of different sizes viz, 3 stones of 1.8mm, 3.3mm and 5mm respectively, the first USG done 2 weeks before reports '*nothing abnormal*'. Subsequently, 10 days after, the second USG, another USG (third one) was also done by the selfsame Radiologist, Dr. Anindita Mukherjee and the findings of the second USG

was confirmed. In this third USG, presence of kidney stone was detected. On the face of above, materials on record, it can safely be said, unless there was clear deficiency in patient care service, on the part of the radiologist, these anomalies could not have occasioned. Dr. Mukherjee claimed the stone in the VUJ was missed at Patna. This is not right as we find in the USG report done at Patna showed a stone in the VUJ.

With same prescription patient had an X-ray abdomen done at Bansdronei clinic which revealed a radio opaque shadow in right kidney region. When this X ray was shown to her during hearing before the commission she tried to interpret this as fecolith. When pointed out by one the member of the commission she ultimately agreed and interpreted this as a right kidney stone. If she would have interpreted this in right perspective she could have asked for review USG scan after proper preparation.

Dr. Mukherjee relied on the article *Urinary Calculi Imaging* author Dr. J. Kevin Smith published in Medscape. According to the said journal, US is very insensitive for stones, especially stones smaller than 2 mm, stones at the UPJ, or stones in the mid ureter. However, in the present case, stones were detected within 2 weeks and which were much greater than size of 2mm and were 3.3mm and 5mm. Therefore, missing of such stone is not likely to be occasioned if standard operating procedure would have been followed. The plea, since URETERS was not dilated, the stones were missed is not acceptable. In the third test conducted by the said radiologist, a calculus (3.3mm) was noted at upper pole of right kidney and another calculus (5mm) was noted at right vesico-ureteric junction.

9. We are of the opinion that this is a clear case of deficiency in patient care service and we are not satisfied with the explanation forthcoming from the concerned radiologist. Due to this mistake, no timely adequate treatment could have been provided to the service recipient, which aggravated his pain and sufferings and, therefore, he is entitled for compensation.

We find from the document furnished before us from the side of the Clinical Establishment that Dr. Anindita Mukherjee is a consultant sonologist under the employment of the Apollo Clinic, Bansdronei, a unit of FMC Health Care Pvt. Ltd. Therefore, the Apollo Clinic is liable to compensate the service recipient for the physical and mental pain and sufferings he has to undergo.

In the result, this case succeeds and a sum of Rs.20 thousand (Rupees twenty thousand) be awarded as compensation to the service recipient Mr. Rajnish Kumar and the Clinical Establishment, The Apollo Clinic, Bansdrone, shall pay the compensation amount by account payee demand draft to the complaint within two weeks from this day.

Sd/-
Justice Ashim Kumar Roy
Chairperson

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Gopal Krishna Dhali, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.



Authenticated

[Signature]
16/3/2018

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