

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Madhusudan Banerjee, Member.

Shri. S.K. Thade, IAS, Member.

COMPLAINT ID: WMID/2017/000161.

Mr. Badal Chandra Manna.....Complainant.

-versus-

Jai Jagannath Multispeciality Nursing Home & others.....Respondents.

Date of judgment: 26th June, 2018.

J U D G M E N T.

This case has been registered upon receipt of a letter of complaint from Badal Chandra Manna, who himself is the service recipient.

It is his case that on May 21, 2017, having a fracture in his left wrist due to an accidental fall from his bed, on the same night, he took admission at Jai Jagannath Multispecialty Nursing Home at Midnapur. On the next morning (May 22, 2017) Dr. Latif operated and plastered his injured hand. Since, after operation he was having acute pain on his left hand with numbness, on May 23, 2017, when Dr. Latif visited him, he apprised him about the same but Dr. Latif gave no importance to his complaint and had shown a very casual approach. On the next two days i.e. on 24th and 25th May, 2017, neither Dr. Latif turned up nor any other doctor or RMO attended him. Since the pain was rapidly aggravated, the complainant regularly requested the staff of the nursing home, whenever occasionally they visited him to send for Dr. Latif but they

paid no heed to his request and were quite lackadaisical. Finally, on May 26, 2017, at around 11 a.m. in the morning, Dr. Latif came to the nursing home and examining his injured hand, advised for "Photo" (Color Doppler Study of Left upper limb) x-ray. After studying the report Dr. Latif informed him that a minor operation was needed and took him to the operation theatre. At OT, after examining the operated site, Dr. Latif informed the relations of the complainant that a nerve has been damaged and that needed a minor operation. Then as advised by Dr. Latif he was taken to OT but in the midst of operation, the complainant and his relations were however informed by Dr. Latif that it is urgent to shift the complainant to any higher centre at Kolkata to avoid any future adverse consequences. Dr. Latif and the nursing home authority also assured them that they would arrange everything for his treatment at Kolkata as also the nursing home. Then a hired car was arranged by the nursing home authority and he was sent to Phoenix Nursing Home accompanied by one of their staff. However, when they reached Phoenix Nursing Home, they came to learn from the nursing home staffs that nobody from Jai Jagannath Multispecialty Nursing Home had contacted them for his treatment and told that no operation can be done there. Then they went to Flemming Nursing Home. Where the attending doctor examining his injured hand, informed that due to a nerve cut, blood supply in the hand has been stopped and his left forearm had gone dead. Thereafter on May 28, 2017, in the morning the service recipient took admission at CMRI Hospital, and was examined by Dr. Golash and he also opined due to cut off an artery, the blood supply has stopped and his left hand has gone dead about two days back and that cannot be rectified. Dr. Golash advised that to save his life his left upper limb has to be amputated. Subsequently, on May 30, 2017, his left lower limb below the elbow was amputated.

It is the specific case of the complainant that due to the wrong and negligent operation by Dr. Latif and deficiency in patient care service of the nursing home authority, he has to lose his left hand forever.

It was added that the complainant is the only bread winner of his family which comprises of his wife, two minor children, old ailing mother and the widow of his younger

brother and their children. He used to run his family out of his income from his building material shop. He claimed for exemplary compensation.

2. It appears from the record that beside making complaint to the Commission, the complainant also lodged an FIR at Paschim Medinipur Kotwali Police Station against Dr. Latif and accordingly FIR No. 567/2017 under Section 338 IPC and Section 34 (1) (9) of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, has been registered and investigation has been commenced.

3. Immediately, upon receipt of the above complainant, notice was issued against the Clinical Establishment and Dr. Latif seeking their response and the entire medical file of the service recipient was called for.

4. In response to the notice, the Clinical Establishment and Dr. Latif appeared before the Commission and produced the medical file of the complainant.

5. During the hearing, both the complainant and the Clinical Establishment on being directed by the Commission presented their case in the form of affidavit.

In his affidavit, the complainant reiterated his case made out in his letter of complaint, enclosing his discharge certificate issued by Jai Jagannath Nursing Home, his treatment summary at Flemming Nursing Home with bills and the discharge certificate with bills issued by CMRI Hospital.

The Clinical Establishment Jai Jagannath Nursing Home also submitted their affidavit refuting the charge brought against it and the treating doctor and with their affidavit the treatment papers of the complainant were annexed.

6. Before the Commission, the complainant was examined on oath.

7. On the other hand, the Clinical Establishment produced Dr. Mangal Prasad Mallick, claiming him to be their full time RMO as also Ms. Usha Mishra, Ms. Sandha Panja, Ms. Rinku Bag and Ms. Mithu Bhakta as their nursing staffs. Mr. Soumen Maity, one of the partner of Jai

Jagannath Multispecialty Nursing Home represented it during the hearing. All of them were examined on oath and their statement was recorded.

8. The Clinical Establishment in its affidavit affirmed by Mr. Soumen Maity denied all the allegations made against it by the complainant. It is claimed they are running their hospital strictly in terms of the condition of license. It is further claimed that they have regular RMO and OT nurses and other nursing staffs who are duly qualified. Besides that they are ground management staffs who are very sincere in their service and strictly follow the instruction of the doctors. They denied that the complainant was not attended properly by the RMO and their nursing staffs during his stay in the nursing from May 21, 2017 (night) to May 27, 2017 and claimed that the RMO and the nursing staffs gave adequate medical attention to the complainant.

It is also claimed that the nursing home and the treating doctor gave their sincere service to the patient and there was nothing wrong on the part of Dr. Latif in performing the operation farless any negligence. It is added that during the operation, Dr. Latif has done Distal Humerus Plating for which there is no question of cut of nerve of his hand arise by that treating doctor. On the other hand, the treating doctor and the Nursing Home Authority referred the patient to a higher centre for his further treatment with an arrangement of vehicle and one person of his Nursing Home was accompanied with them.

Lastly it is added that for the treatment of the patient no bill was raised nor any payment was received from the complainant or from his relations.

9. The complainant in his examination on oath stated as follows,

"On May 26, 2017, he was advised by his treating Dr. Latif that he required some specialized treatment at any big nursing home Kolkata and referred him to Phoenix Nursing Home. At that time Dr. Latif handed over to him Rs.40,000/- (Forty thousand only) in cash and the nursing home authority promised to give him Rs.12lakh (Twelve lakh only) for his treatment. Subsequently, only Rs.2.5lakh (Two lakh and fifty thousand only) was paid by them.

If the hospital authority would have kept their promise and paid the balance amount he would not have approached the Commission for compensation.

The RMO Dr. Mangal Prasad Mallick never visited him in the ward and the nursing staffs who were presented by the nursing home authority were never participated in his nursing care.

The cross-examination of this witness was declined by the Clinical Establishment."

10. a) *Dr. Mangal Prasad Mallick* in his deposition claimed that he passed his MBBS in the year 2006 from R.G. Kar Medical College and obtained his post-graduate degree MS (Gynaechology) from Silchar Medical College under Assam University. He was working as RMO in the nursing home since February 2017 and during the period the complainant, Badal Chandra Manna was admitted there, he was on duty. He used to attend his duty at 7 a.m. in the morning and remain there up to 9.30 a.m. He runs a private chamber from 10 a.m. to 1 p.m. and again come back at 2 p.m and remain at the nursing home till 5 p.m. From 5 p.m. to 7 p.m. he attends his private chamber and on every night he used to stay at the nursing home as night RMO.

In response to a question put the witness by the Commission as to how he after doing his night duty at the nursing home, he again resumes his duty from 7 p.m. in the morning, the witness remained silent.

At the relevant period, he was the only RMO in the nursing home which is a multispecialty nursing home having 20 beds and 10-12 indoor patients are always there. He could not say how many nursing staffs are employed in the nursing home.

He admitted that he was involved in the treatment of the complainant and denied that he did not attend the patient on May 23, 2017 as alleged by the patient party but was unable to show any clinical note on the treatment sheet of that day by him.

The witness volunteered that while on night duty he used to leave nursing home to visit his own private patients.

b) *Ms Sandhya Panja*, in her deposition claimed that she was registered with West Bengal Nursing Council and on and from February 7, 2017, she was attached with the Clinical Establishment and working there as OT sister. On May 23, 2017, the particular patient was operated in the OT. Beside her, there was another assistant sister Mithu Bhakta. She was never involved in the treatment of patient in the ward. At the relevant period, total 10/11 nursing staffs were attached with the nursing home out of them 4 were registered with West Bengal Nursing Council and remaining were assistant nurses. Those unregistered nurses obtained the training from private nursing institute.

c) *Ms Rinku Bag*, admitted that she was not registered with the West Bengal Nursing Council and at the nursing home she used to look after indoor patients. She further claimed she used to record pulse rate, BP, Oxygen saturation, temperature of the patients and administer oxygen and injection to them. She also used to give intravenous injection and make IV channel for the indoor patient. She admitted that she has no nursing training.

d) *Ms Usha Mishra*, that she was registered with West Bengal Nursing Council and attached with the nursing home on and from February 7, 2017 and was involved in the nursing care of the complainant. When confronted with the medical papers of the complainant, the witness expressed her inability to identify the nursing staffs by whom, the medication chart and intake chart of the patient was filled up. She could not remember who were the sisters on duty on that particular day.

e) *Ms Mithu Bhakta*, admitted that she was not registered with West Bengal Nursing Council and used to work in the nursing home as assistant sister. At the time of operation of the complainant she was present in the OT to assist the OT nurse during operation and she never participated in indoor patient treatment. She could not say how many sisters were attached in the nursing home and remained silent.

The Cross-examination of all the above 5 witnesses was declined by the Clinical Establishment.

11. From the side of the Clinical Establishment, its licence to run the nursing home issued under West Bengal Clinical Establishment Act, the registration certificates with West Bengal Nursing Council of Ms Sandhya Panja, Ms Usha Mishra were produced with the affidavit. The registration certificate of Dr Mangal Prasad Mullick with West Bengal Medical Council and the joining report of Dr Mangal Prasad Mullick, agreeing to work in the nursing home as RMO.

12. The members of the Commission having medical background actively participated and gave their valuable opinions.

13. Now on perusal of the materials on record including the treatment documents of the complainant relating to his treatment at Jai Jagannath Multispecialty Nursing Home as also subsequent treatment meted out to him at Flemming Nursing Home and CMRI Hospital. The Commission finds as follows,

The complainant Badal Chandra Manna was admitted at Jai Jagannath Multispecialty Nursing Home, on May 22, 2017, for fracture of the left humerus. The operation was done by Dr Latif on May 22, 2017 in the afternoon and after operation Tourniquet was released and operated limb was not plastered but supported by bandage and sling. On May 23, 2017 Dr Latif examined the patient and suspected Tourniquet Palsy and that was explained to the patient party. At that time distal pulse was present as noted in the Bed Head Ticket. Although it is claimed by the complainant that Dr Latif did not visit on May 24, 2017 and May 25, 2017 but it appears from the note in the Bed Head Ticket that Dr Latif examined him on May 24, 2017 but no time was noted. Thereafter May 26, 2017, around 11am Dr Latif examined the patient and found the fingers are getting bluish and cold and pulse rate was barely palpable. It is found from the record that the patient complained of pain in left fingers but no due attention was paid by the RMO and even Dr Latif was not available on May 24 and May 25, 2017. It appears from the Bed Head Ticket of the patient, after operation on each day till the patient was discharged, blood pressure and pulse rate were checked by the nursing staffs and reading was recorded and according to that the same were within normal range, presumably the pulse rate of the right hand was checked instead of left hand since operated. On May 26, 2017, in afternoon, Ultrasound and Colour Doppler Study was done as

advised by Dr Latif and Dr Latif did fasciotomy in the left arm after explaining the prognosis to the patient party. He found some muscles are viable except deep anterior muscles which were dull looking and Flexor Digitorum was bruised. He advised the patient to go to the higher centre and advised some antibiotics. He telephoned Phoenix Hospital but the patient did not get admission there. They went to Flemming Hospital where he stayed for 36 hours and ultimately, the patient went to CMRI for surgical intervention and unfortunately, by that time, the patient has lost all left arm arterial pulse and he had to undergo left arm amputation.

14. The materials available from the medical file of the complainant goes to show that there is a prima facie case of medical negligence on the part of the doctor, as well as deficiency in patient care service on the part of the Clinical Establishment. The loss of arterial pulse following operation was not identified in time, of course, due to lack of proper medical care and attention.

15. So far as the medical negligence on the part of Dr Latif is concerned, we restrain ourselves to address the same, since that is beyond the scope of adjudication by this Commission as restricted vide the first proviso to sub-section (iii) of Section 38 of West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017.

16. Now coming to the case of the complainant against the Clinical Establishment, it would be pertinent to refer the statement of Mr Soumen Maity, recorded on oath, one of the partner of Jai Jagannath Multispeciality Nursing Home and represented it.

According to him, they used to treat indoor patients at their nursing home, having 20 beds, for orthopaedic surgery, gynaecological disorder, labour and for other medical complications. At the relevant time, they had only one full time RMO, Dr Mangal Prasad Mullick. (While, it appears from a document, annexed with the affidavit of the Clinical Establishment, purportedly executed on dated September 20, 2016 that Dr Mullick agreed to work in the said nursing home as RMO but according to the evidence of Dr Mullick, he was working there from February 7, 2017). Dr Mullick, stated on oath that he used to run a private chamber in the morning from 10 a.m. to 1 p.m and then in the evening from 5 p.m. to 7 p.m. and even while on night duty he used to attend his private patient elsewhere. Therefore, it is

evident that the Clinical Establishment had no full time RMO, although according to the partner of the Clinical Establishment that it is a 20 beds nursing home and according to Dr. Mullick in average there were 10/12 indoor patient remained admitted every day. Besides above, we find from the Bed Head Ticket that the patient was examined by Dr Mullick only once on May 22, 2017 and twice on May 25, 2017. There is no clinical note that the complainant was attended by Dr. Mullick on any other day while he was in the nursing home.

According to Mr Soumen Maity, at their nursing home, they have 4 registered nurses, namely, Sandhya Panja, Neela Mukherjee, Sandhya Biswas and Usha Mishra and at the relevant period Usha Mishra and Sandhya Panja were on duty and one of whom was the OT sister. It is the evidence of Sandhya Panja, that she was the OT sister and was present at the time of operation of the patient and not involved in the treatment of the patient in the ward. Although Usha Mishra claimed that she was involved in the treatment of the complainant but she expressed her disability to identify by whom medication chart and intake chart of the patient was filled up. Two other nurses were produced by the Clinical Establishment before the Commission, both of them admitted that they were not registered with West Bengal Nursing Council. One of them, Rinku Bag claimed that she used to record pulse rate, BP, Oxygen saturation, temperature etc., administer oxygen and intravenous injection and make IV channels of the indoor patients, while admitting that she has no nursing training.

The above materials on record undoubtedly establishes that clinical establishment has no full time RMO and is in dearth of adequate trained nursing staffs, although running a 20-bed nursing home, which is in average having more than 50% regular occupancy. Undoubtedly, the absence of full time RMO and inadequate knowledge of the nursing staffs led to this dangerous situation of post-operative acute ischemia of the left upper limb of the complainant and ultimately, arm amputation had to be done as a salvage procedure.

We, therefore, conclude that the case of the complainant against the Clinical Establishment, Jai Jagannath Multispeciality Nursing Home that due to deficiency in providing adequate patient care service, the service recipient had to suffer a grievous injury by loss of his left forearm forever and thus makes it liable for payment of compensation in terms of sub-

section (b) of Section 33 of West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017.

17. Above conclusion takes us to the question of fixation of quantum of compensation. Admittedly, the Clinical Establishment has neither raised any bill nor received any payment from the complainant. On the other hand, the complainant admittedly received a total sum of Rs.2.9lakh (Two lakh and ninety thousand only) on account of his further treatment. Merely because the clinical establishment has not obtained any payment from the service recipient for the treatment provided to him at their nursing home that does not absolve its liability to pay compensation to the complainant, when it is found that the Clinical Establishment is guilty of deficiency in patient care service and that led to loss of forearm of the patient, in a case of grievous injury. The complainant is the only breadwinner of his family comprising of his old and ailing mother, wife and two minor children and widow of his deceased brother and their children.

This is a case where the service recipient suffered grievous injury. He had to lose his left upper limb from mid arm. According to the provisions of sub-section (b) of Section 33 where a service recipient suffered a grievous injury, he has entitled to a compensation which may be extended up to Rs.5lakh (Five Lakh). Admittedly, in this case the complainant has already received Rs.2.9lakh (Two lakh and ninety thousand only) from the respondents.

In the above backdrop, we are of the opinion that justice will be sub-served if an amount of Rs.2.1lakh (Two lakh and ten thousand only) is awarded as compensation. The amount of compensation of Rs.2.1lakh (Two lakh and ten thousand only) shall be paid to the complainant through an account payee banker's cheque within 15 days from this day.

18. It goes without saying that this order will not preclude the complainant to approach West Bengal Medical Council against the concerned doctor and other statutory forum in accordance with law if so advised.

19. Let a copy of this order be communicated to licencing authority, CMOH, Paschim Medinipur within whose local limit, erring Clinical Establishment, Jai Jagannath Multispeciality Nursing Home is situated, so as to ensure all other Clinical Establishments situated within his local limit must run their respective establishments strictly in accordance with the condition of licence.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Shri. S.K. Thade, IAS, Member.

Authenticated
✓ 29/6/2018.