

**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: NAD/2017/000060

Mr. Haralal Das.....Complainant.

-versus-

J.M. Carnival Hospital & others.....Respondents.

Date of judgment: 11th September, 2018.

J U D G M E N T.

It is the case of the complainant, as it transpires from his letter of complaint and the complaint in the form of affidavit, is as follows,

The wife of the complainant, Ms. Rupali Das, after conceiving for second time was under the treatment of Dr. Jibankush Biswas. On 24.11.2016 the complainant's wife was first examined by Dr. Biswas at a doctor's chamber, Saha Medicine Centre, Lalpur Chakdah, Nadia and thereafter on several occasions. As advised by Dr. Jibankush Biswas, the wife of the complainant on 10.04.2017, at around 8.30am in the morning, took admission at J.M. Carnival Hospital, Kalyani, Nadia for delivery. On the same day (10.04.2017), in between 10.30am to 11.30 am, Dr. Biswas performed caesarian section and a male child was born. Thereafter around 6.30pm, the complainant met Dr. Biswas, when he was told the medical condition of both the mother and the baby are perfectly alright and nothing to be worried. However, on the next morning on 11.04.2017 at around 7.30am the complainant received a phone call from Dr.

Jibankush Biswas and he was told that the condition of his wife is very serious and was asked to come to the hospital forthwith. The complainant with his relatives then reached the hospital around 8.30am although the doctors, nursing staffs and other officials of the hospital were silent as to how the condition of the patient got deteriorated so suddenly. But the complainant came to learn from the other patient that on the last night, the condition of his wife was very serious and throughout the night not only there was massive bleeding but she was also groaning out of tremendous pain, however, no doctor or even the nursing staffs attended her. In the mean time at around 8.30am, without his consent, Dr. Biswas removed his wife to operation theatre but he was never told for what she was taken to OT. Thereafter, she was brought out from OT around 9.30am and the complainant was told by Dr. Biswas that she was taken to OT for blood transfusion for her better treatment and the blood has been arranged by the nursing home. This time also, Dr. Biswas did not inform the complainant about the condition of his wife and got his signature in three blank papers and on the pretext that he has some emergency work, left the hospital. They were not allowed to meet the patient nor was told anything about the patient. Then around 10.30am Dr. Biswas came back to the nursing home and sometime thereafter, the complainant was informed by him that his wife has already expired. It is his further case that the baby was born with some urinary problem but at the hospital no treatment was given to him and he is still suffering from such problem. After her death, the complainant repeatedly asked the nursing home authority to handover him the medical file of his wife but he was told that same was taken away by Dr. Biswas and nothing is lying in the file. The complainant, following the death of his wife lodged two complaints, one to the Officer-in-charge, Kalyani Police Station and another to the Superintendent of Police, Nadia. On the next day on 12.04.2017, the nursing home authority handed over to him the medical file of his wife containing 14 pages. The complainant has also approached the Director of Health Services, Government of West Bengal, Chief Medical Officer of Health, Nadia against the doctor and the nursing home authority for negligence in treatment. It is lastly, the case of the complainant that Dr. Jibankush Biswas, J.M. Carnival Hospital, their nurses and other staffs have failed to provide necessary patient care service to his wife and negligently treated her and that was the cause of her death. It is prayed a sum of Rs.1 crore be awarded as compensation.

The complainant presented his case in the form of affidavit as directed by the Commission.

2. In response to the case of the complainant, the Clinical Establishment and Dr. Jibankush Biswas has also filed their respective replies in the form of affidavit.

3. It is contended by the Clinical Establishment in their reply that the wife of the complainant was a patient of Dr. Biswas and was undergoing treatment under his care. She was admitted at J.M. Carnival Hospital under Dr. Biswas and Dr. Biswas had expressly disclosed the serious condition, complication and prognosis of the patient. At the time of admission, her weight was about 104 kg and associated with high blood pressure which was known to the complainant. The delivery of the child by caesarian section was decision of Dr. Biswas and the Clinical Establishment has nothing to do with it. The case of the complainant's wife was Rectus Sheath Heamatoma, there is no external bleeding of the patient. The external bleeding only pertains to the menstrual bleeding of the patient via vagina post child delivery, which is normal in all cases. However since the trained Nursing Staff and the Registered Medical Officers of the Hospital were vigilant with the vital statistics of the patient throughout the post operative period, once they noted the fall in blood pressure and rise in the pulse rate and abdominal rigidity, they immediately informed the consultant doctor without delay. The same was also explained to the complainant when he came to the hospital on 11.04.2017. The complainant was duly informed about the necessity of the second operation and such operation was done with his due consent. After the operation on 11.04.2017, both the baby and mother were in good health condition. It is true that blood was necessary for carrying out the operation and the same was arranged by the Clinical Establishment. No blank paper was signed by the complainant. It is not correct that the complainant and his relations were not allowed to meet the patient and the baby and the baby was not treated by any child specialist. Since the baby was taken discharge from the hospital on 10.04.2017 so, therefore, there was no much chance for giving medical treatment to him. It is denied that the papers were taken out from the file by Dr. Jibankush Biswas. The service recipient Rupali Das did not die due to any negligence in her

treatment but due to the complications arising out of patient's co-morbid condition like having excessive body weight coupled with high uncontrolled blood pressure.

4. Dr. Jibankush Biwas in his affidavit stated as follows,

Smt. Rupali Das, wife of Haralal Das came to him for the first time for her antenatal check up on November 24, 2016 in Saha Medicine Centre at Chakdaha, Nadia, when she was aged about 33 years, weighing 88 kgs, at 16 weeks of pregnancy with normal blood pressure being 130/80 mm of Hg, second gravida, previous vaginal delivery being 9 years back. She was advised to come for further check up after 4 weeks, but she came after 10 weeks on January 9, 2017. When Dr. Biswas came to learn from her that during this time she went to another obstetrician but since her blood pressure had become high, she later came back to him. On and from that date, she was put on Tab. Nifedipne Retrd. (20mg) once daily. She was irregular in taking her prescribed medicines and on April 6, 2017 when she had come to me for her check up, her blood pressure had become 170/100 mm of hg and she was thus also put on Tab Labatalol (100mg) together with Tab. Nifedipne Retrd. (20mg) in view of high blood pressure, high body weight (104 kgs), gross pedaledema, high floating head, unfavourable cervix. Although her expected date of delivery was on April 24, 2017 decision for caesarean section had to be taken to be conducted on April 10, 2017 after controlling her blood pressure to 130/90 mg of hg. Thus caesarean section was performed at 11.00am on April 10, 2017.

In post-operative period, patient's vitals were alright (i.e. blood pressure, pulse, respiration was norma, no bleeding per vagina, abdomen was soft and good urine output) at 6.00pm on April 10, 2017. At 6.00pm, during the round at the hospital, Dr. Biswas had a talk with the patient and her husband and only after seeing that the patient was alright, he left the hospital at 7.50pm. Blood pressure noted was 100/90 mm of hg. T here was systolic fall of blood pressure by 30 mm of hg but no change in diastolic pressure, which might be due to less intake of Intravenous (I/V) fluid. There was no bleeding per vagina, no tachycardia, no pallor and due to extreme obesity abdomen seemed to be soft and suspicion of internal haemorrhage was not there. Later she was given rapid I/V fluid and blood pressure became normal therefore blood requisition and transfusion was not deemed necessary at 7.50pm on April 10, 2017.

Dr. Biswas, after getting a call at 4.00am on April 11, 2017, he rushed to the hospital at Kalyani from Barasat (i.e. 40kms) at 6.00am. Thereafter on examining the patient, he took the decision of Laparotomy after resuscitation, crystalloid and collariods and vesopressure (Dobutamin) and three units of blood requisition was done at 6.00am on the said date. Although prompt efforts were taken for blood but it could not be arranged as there are only two Government blood banks at Kalyani, Nadia one is at Jawaharlal Nehru Memorial Hospital and another one is at Gandhi Memorial Hospital both of which do not operate until 9.00am. There is no private blood bank at Kalyani, Nadia. Thereby we suffered a lot to manage the patient in haemorrhagic condition. The patient was thereafter given blood at 9.30am as soon as the blood bank opened and blood was brought. There was no intentional delay in carrying out the operation on 11.04.2017. As already mentioned, on receiving the call at 4.00am on 11.04.2017, he rushed to the hospital at Kalyani from Barasat and reached there at around 6.00am and on seeing the patient, he immediately tried to arrange the operating team. As it was early morning it took some time to arrange for the team to conduct the operation. He called up the anaesthetist, assistant and informed the O.T. and then called up the patient's husband and informed him about the serious condition of the patient and took a verbal consent for laparotomy over telephone. The patient was then shifted to the O.T. at 7.30am and the operation started at 7.45am on April 11, 2017 and finished at 8.15am. As the blood banks were not open until 9.00am on April 11, 2017 blood transfusion could be done only at 9.30am.

Operative finding was that there was collection of clotted blood mixed with fluids (200cc approx) under rectus sheath. On opening the abdomen there was fluid mixed with clotted blood in the peritoneal cavity which had percolated through the peritoneal incision. There was no bleeding found on the stitch line of the uterus and no broad ligament hematoma. The blood which was found in the peritoneal cavity had percolated from subrectus hematoma. There was only one bleeding point noticed in the rectus sheath, which was ligated and no other bleeding point found at that point. Peritoneal toileting was done, drain was put in abdominal cavity and abdomen was closed in layers. Monitoring the patient and intimated that she was doing alright through the night under his supervision but noticed deterioration at 4.00am and informed the surgeon concerned.

5. Heard the parties at length. Considered their respective submissions and those made out in their affidavits.

6. The medical experts of the Commission took part in the deliberation and expressed their valuable opinion.

7. The wife of the complainant, Mrs. Rupali Das, aged about 33 years was on antenatal check up under Dr. Jibankush Biswas after she conceived for the second time. As advised by Dr. Biswas, the service recipient was admitted at J.M. Carnival Hospital on 10.04.2017 at 8.50am and LUCS (lower uterine caesarean section) was done around 11am in view of PET. The patient thereafter was taken care of in the ward but there was no record of the status of the patient till 7.50pm. The RMO on duty recorded his observation at 10pm and 4pm. In the nursing chart, the pulse and blood pressure of the patient was noted but the nurse's record and the doctor's record did not match. The blood pressure was recorded 80/60 mm/hg at 9.30pm but such fact was not brought to the notice of RMO on duty although low blood pressure was suggestive of severe shock but there was no proper medical management. In the fluid chart maintained by the nurses time and dates noted are incorrect. As per record, that adequate amount of fluid was administered on the patient even on the face of severe drop of blood pressure. The consultant was not informed either by the RMO on duty or the nurses regarding the deteriorating status of the patient. According to the RMO he informed Dr. Biswas around 4am in the morning and Dr. Biswas arrived around 6am. Dr. Biswas decided to re-explore the patient immediately but before taking up the patient for second surgery the status of the patient was not evaluated and recorded. The second surgery was done as emergency and anaesthetics note revealed that patient was operated under Ketamine anaesthesia. In a critically ill patient, with bleeding, Ketamine anaesthesia is not ideal and the patient should have been operated with controlled airway. There was inordinate delay in sending requisition for blood although the condition of the patient was critical and this is a case of extreme emergency. The blood bank received the requisition at 9.30am but was delivered at 10.30pm and transfusion was started from 11am and continued till 11.50am (We find from the medical records that 12 noon was first noted as time of infusion of first unit of blood but same was penned through and

substituted by the time 11am). According to the record, transfusion of second unit of blood was started at 12 noon and she was declared dead at 12.40pm on 11.04.2017. In the death certificate the time of death mentioned on 11.04.2017 around 12.45pm and cause of death, cardio respiratory failure in a post caesarean case with hypertension and DIC. However, there is no indication about the second surgery. We find several investigation reports with the BHT but not a single one relates to the period after the patient admitted in the hospital and during her stay there.

8. The Clinical Establishment filed a further affidavit (dated July 9, 2018) affirmed by Dr. N.K. Biswas, Superintendent, J.M. Carnival Hospital. According to the said affidavit, during the period from 10.04.2017 to 11.04.2017, the sanctioned bed strength of the nursing home was 80 and average daily bed occupancy was around 20. During the said period, there was total 34 indoor patients. It was further stated that on 10.04.2017 from 8am to 8pm there were two nurses , Kanan Debnath and Sadhana Paul and on 11.04.2017 from 8am to 8pm, there were two nursing staffs, Bisakha Debnath and Kanan Debnath on duty. It was further stated that on 10.04.2017 from 8.30am to 8.30am on the next day i.e. on 11.04.2017, Dr. Prakash Biswas was RMO on duty and Dr. Sujan Das was on duty from 8.30am on 11.04.2017 to 8.30am on 12.04.2017.

9. During the course of hearing, the Clinical Establishment produced their nursing staffs Chaya Majumder, Tuku Sil, Sabita Adhikary, Sadhana Paul and Kanan Majumder . Although in the aforesaid affidavit, it is claimed that on duty registered nurses, on 10.04.2017 from 8am to 8pm, were Kanan Debnath and Sadhana Paul . On 11.04.2017 from 8am to 8pm were Bisakha Debnath and Kanan Debnath. However, Sadhana Paul, who was in West Bengal Nursing Service, claimed that she was not involved in the treatment of the patient, while Kanan Mauumder, who was also in West Bengal Nursing Service, claimed that she was a part-time nursing staff attached with the said nursing home and did not assist the doctor during the operation of the patient. Other three nursing staffs, Chaya Majumder, Tuku Sil and Sabita Adhikary admitted that they were not registered with the West Bengal Nursing Council. Chaya Majumder claimed that she was involved in the patient care service of the service recipient on 10.04.2017 during

night shift. She recorded the blood pressure, informed the same to the RMO Dr. Prakash Biswas and administered injections as advised by the RMO. Tuku Sil stated that she was on duty during second operation and assisted the doctor in the OT. Sabita Adhikary stated that on 11.04.2017 she was on duty when Rupali Das underwent surgical operation and she was in patient care service.

10. Now from the statement of the nursing staffs, Chhaya Majumder, Tuku Sil and Sabita Adhikary, it is an admitted fact that none of them is registered with West Bengal Nursing Council and they have not completed their nursing courses from any recognized nursing institute. However, according to one of them, Chhaya Majumder, she was on night shift duty on 10.04.2017 and she not only recorded the blood pressure of the service recipient but also administered injection to the patient as advised by RMO , Dr Prakash Biswas. While according to nursing staff, Tuku Sil, she assisted the doctor in the OT at the time of second operation of the service recipient and according to Sabita Adhikary, she was involved in the patient care service of the service recipient after the patient underwent second operation on April 11, 2017. Therefore, according to the statements of the above three nursing staffs recorded on oath, it is clearly established that during the aforesaid period at J M Carnival Hospital, patient care services was provided to the service recipient, the wife of the complainant, while she was in a very critical stage by unqualified nursing staffs, who were not registered with the West Bengal Nursing Council and claimed to have obtained nursing training from unrecognized institution.

In addition to above, Mr Moinak Mohanty, Manager of J M Carnival Hospital, in his statement on oath, claimed that all the GNM and ANM, who are associated with their nursing home are trained, qualified and registered with West Bengal Nursing Council and Kanan Majumder and Sadhana Pal were involved in nursing care services of the service recipient. This, of course, amounts to a clear case of deficiency in patient care service on the part of the Clinical Establishment. Furthermore, the claim of Mr Mohanty that their nursing staffs are all trained, qualified and registered with West Bengal Nursing Council stands falsified by the nursing staffs Chhaya Majumder, Tuku Sil and Sabita Adhikary in their statement on oath before the Commission. The two other qualified nursing staffs, namely, Sadhana Pal and Kanan Majumder,

who were in West Bengal Nursing Service and after retirement joined J M Carnival Hospital, categorically stated that they were not involved in the treatment of the patient.

11. In his affidavit, affirmed on July 9, 2018 by the Medical Superintendent of J M Carnival Hospital, it is stated that Dr Prakash Biswas was RMO on duty on 10.04.2017 from 8.30am in the morning till 8.30am on the next day (11.04.2017). It is further stated that thereafter on the next day i.e. on 11.04.2017 from 8.30am to 12.04.2017, Dr Sujan Das was on duty.

In addition to above, Mr Moinak Mohanty, Manager of J M Carnival Hospital, in his statement on oath before the Commission, claimed on 11.04.2017 after Dr Prakash Biswas, RMO was relieved of his duty and Dr Sujan Das took over the charge as RMO. He further stated he was RMO for one single day and he was paid salary for that day only.

12. Dr Sujan Das was examined on oath before the Commission.

In his statement, Dr Sujan Das categorically denied that he was working as RMO at the relevant time at J M Carnival Hospital and claimed that he was in no way associated with the said hospital and knew nothing about treatment of the service recipient. According to him, he passed his MBBS examination in February 2016 from Jawaharlal Nehru Memorial Hospital and completed his internship from there from March 2016 to March 2017. According to him, he completed his house staffship at the same hospital from March 2017 to March 2018.

Not only Dr Sujan Das denied he was working as RMO at J M Carnival Hospital at the relevant time, but also denied his any association with the said nursing home. Furthermore, it is quite strange that according to J M Carnival Hospital, Dr Das was employed there for one single day and his salary was paid for that day only, although according to him, at that relevant time, he was doing his house staffship (March 2016 to March 2017) at Jawaharlal Nehru Memorial Hospital. The above facts cast a very serious doubt as to the claim of the Clinical Establishment that on April 11, 2017, Dr Das was on duty RMO at their nursing home.

We have no option or any justifiable reason, in the above backdrop, to hold that there was a regular RMO at J M Carnival Hospital on April 11, 2017, the day when the service recipient,

the wife of the complainant, breathed her last. Running any nursing home for a single day, on a day when the number of indoor patient was 34 without regular RMO is not only a glaring violation of the condition of licence but a clear deficiency in patient care service.

13. According to the Members of the Commission having medical background, there are various deficiencies on the part of the primary consultant and on duty RMO in the treatment of the service recipient. There was no record of the status of the patient after LUCS performed around 11am on 10.04.2017 till 7.50pm. The RMO on duty recorded his observation at 10pm and 4am. According to the RMO on duty, he informed the deteriorating condition of the patient to the primary consultant in the early morning at around 4am and the primary consultant attended the patient at 6am nearly 2 hours after. Then second operation was performed around 7.30am i.e. one and half hour after the arrival of Dr. Jibankush Biswas. The above facts coupled with other attending circumstances, whether amounts to medical negligence by a medical professional, is of course an issue which is to be adjudicated by the State Medical Council as provided in first proviso to sub-Section (III) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 and for that the petitioner is to approach the State Medical Council and the concerned Consumer Redressal Forum against the erring doctors.

14. In this case, post-mortem was held after the death which shall speak for itself and must be one of the considerations of the concerned Medical Council to reach to its decision, if situation so arises.

15. Now having come to a definite conclusion that the factual matrix of the case, as elaborately discussed hereinabove, clearly depicts a case of deficiency in patient care service on the part of the Clinical Establishment and awarding of compensation is therefore certainly call for.

This is case where the service recipient Ms. Rupali Das lost her life at the age of 33 years. She did not have any life threatening disease. She survived by two children, one is breast feeding and another aged about 9 years. The loss of mother at this age for both the

children is not only unfortunate and this would certainly hamper their upbringing. Undoubtedly, both of them have deprived from the necessary child care from the end of their mother and necessity of such care needs no debate.

Considering those facts and other attending circumstances as discussed, we are of the opinion awarding a sum of Rs.5 lakhs as compensation would sub-serve the justice. Such amount of compensation shall be paid to the complainant within 15 days from the date of passing of this order.

16. We make it clear that we have not gone into the question of medical negligence on the part of the treating doctors since the same is beyond our domain and if such question is so arises the competent authority namely, State Medical Council shall adjudicate the same in accordance with law.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Dr. Maitrayee Banerjee, Member.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Authenticated

11/9/2018

ARSHAD HASAN WARS
WBCS (Ex)
Secretary
W. B. C. E. R. C.