

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

Dr. Pradip Kumar Mitra, Member.

Dr. Madhusudan Banerjee, Member.

Dr. Maitrayee Banerjee, Member.

COMPLAINT ID: KOL/2018/000309

Ms. Manju Das.....Complainant.

-versus-

Apollo Gleneagles Hospital & others.....Respondents.

Date of judgment: 11th September, 2018.

J U D G M E N T.

Following the receipt of the letter of complaint, notice was issued against the Clinical Establishment, Apollo Gleneagles Hospital and on their behalf, Mr Partho Bhattacharya, Medical Superintendent and Assistant Director of Medical Services, filed a reply in the form of affidavit. Subsequently, the complainant filed with more detail in the form of affidavit. The copy thereof has been served upon the Clinical Establishment and a reply in the form of affidavit, has been filed for the second time on its behalf this time also by Mr Partho Bhattacharya.

2. We have perused the affidavits filed by the respective parties. Considered their respective submissions. At the time of hearing, the statement of Dr Suvodip Maity, Junior Consultant, Emergency and Dr Arijit Bose, Senior Consultant and Emergency Head attached to Apollo Gleneagles Hospital at that relevant time.

3. On perusal of the materials on record and considering the rival contention of the parties, we find,

The husband of the complainant, Mr Alok Kumar Das, aged about 55 years (at the time of his death) was admitted at Apollo Gleneagles Hospital on March 4, 2015 for a Coronary Angyogram and during such procedure it was found that he was suffering from a triple vessel coronary artery disease. He was advised a thalium scan to be followed by revascularization in March, 2015. On August 21, 2017, the patient visited OPD to follow up with Dr P. C. Mondal and was advised to consult Dr Asok Sengupta for his Advanced Interstitial Lung Disease (ILD) and severe Chronic Obstructive Pulmonary Disease (COPD). On October 25, 2017, he consulted Dr Asok Sengupta at OPD and was explained the poor prognosis of his condition and advised to continue all treatment as advised by Dr S Mukherjee associated with another Clinical Establishment. Simultaneously, Dr Asok Sengupta referred and advised him to Ganga Ram Hospital, Delhi for Lung Transplant Assessment. The patient was then admitted at Ganga Ram Hospital on November 23, 2017 and discharged on November 28, 2017. The discharge summary of the patient at Ganga Ram Hospital has been submitted by the complainant before the Commission. According to the discharge summary, *"the patient was diagnosed that he was suffering from Interstitial Lung Disease (ILD) with pulmonary embolism. It was also noted that he was presented with history of breathlessness for past 5 years which has been exacerbated in last 2 months. He was initially evaluated at Apollo, Kolkata and AMRI, Kolkata. CECT Chest with CT Pulmonary Angiography was done. Investigations revealed possibility of thromboembolism involving the right PA."* According to the clinical summary, *"he was thoroughly counseled regarding his consition and the associated complications. He was subjected to aggressive chest physiotherapy and opinion was sought from Chest Medicine (Dr/Neeraj Jain) and advices were followed. He was then subjected to a V/Q scan which showed some matched and mismatched ventilator defects, Chest medicine review was sought and patient started on anticoagulants in view of possible Pulmonary Thromboembolism. Bilateral Lower Limb Venous Doppler was done, which was normal."* It appears from the records that thereafter again on 5.12.2017, 13.12.2017 and 16.01.2018, the patient, in regular interval, attended Apollo Gleneagles Hospital for his follow up treatment by Dr P C Mandal, Consultant Interventional Cardiologist.

4. Now, it is the case of the complainant that on 17.01.2018 (the very next day of his last visit at Apollo OPD) that the husband of the complainant after having his morning tea, became seriously ill and was complaining of acute breathlessness. Since he was under the treatment of Dr Asok Sengupta and Dr P C Mandal at Apollo Gleneagles Hospital, Kolkata, his family member decided to take him again to Apollo for necessary treatment. Accordingly, an ambulance was called and the patient walked about 200ft and boarded the ambulance. It is further case of the complainant, they reached Apollo premises on 17.01.2018 at around 7am and approached and requested the doctors at emergency to attend the patient for his treatment but the doctors at emergency refused to attend him on the pretext that no bed was available. Since the complainant and his family members found the condition of the patient was deteriorating rapidly, they went on insisting the doctors at emergency to attend the patient. But the emergency doctors paid no heed to the request and her husband was left there in the ambulance for about 45 minutes without any treatment. Finally, the complainant and his family members were able to persuade the emergency doctor to at least examine the patient in the ambulance when a doctor from emergency very reluctantly came to the ambulance and examined her husband and declared that the patient has already expired about 5 minutes before as a result of sudden cardio respiratory arrest. The complainant immediately lodged a complaint to Phulbagan Police Station. Although police advised for autopsy but they did not give consent since that was not an accidental death and already Apollo has issued a death certificate, certifying that patient died due to sudden cardio respiratory arrest.

5. The Apollo Gleneagles, the clinical establishment, in their affidavit- in- reply, affirmed by their Medical Superintendent Partho Bhattacharya by denying the charge against the establishment stated as follows,

On January, 17, 2018 in the morning when the relation of the patient brought the patient in the Hospital in an ambulance, they were categorically informed by the authorized personal at the Hospital emergency that there was no bed available either at critical care unit or anywhere. When the relatives of the patient insisted that the patient be admitted at the emergency unit. But the Hospital personnel present at emergency informed the relative of the

patient party, since no bed either at emergency or at critical unit was available, they should immediately take the patient to any nearby Hospital for his treatment. However, the patient's relatives did not shift him to any nearby Hospital and left him there. Subsequently one of the emergency physicians on duty assessed the patient in the ambulance and immediately wheeled the patient to the emergency unit on a trolley at around 8.10 a.m. However, at the emergency the patient was found completely unresponsive and there was no pulse or blood pressure, neither there was any audible heart or lung beats. There were no reflexes present. The patient was declared dead at 8.12 a.m. After the patient was declared dead, his relations became agitated and threatened and coerced the doctor to record the time of arrival of the ambulance at 6.45 am instead of actual time 7.45 am as corroborated by CCTV footage. However, as the doctor was threatened by the patient's relatives and forced to issue the death certificate recording the time of arrival to at 6.45 am. The Apollo immediately informed the local police station about such incident. It is claimed that the Apollo had provided all possible help and support the patient and his relatives from the time of arrival of the patient in the Hospital. There was no fault or negligence whatsoever on the part of the Apollo. The doctors on duty had provided all the requisite help and assistance to the patient at the earliest opportunity without any delay.

6. During the hearing, the head of the emergency of Apollo, Dr Arijit Bose and the Junior Consultant, Dr Suvodip Maity attached to the Emergency Department, were examined on oath and their statements were recorded.

Dr Arijit Bose admitted that the patient, Alok Kumar Das was their regular OPD patient. He also admitted whenever a gasping patient is brought to their hospital, they initially give primary treatment and then refer the patient to other hospital, where accommodation is available. In this case, at the time when the patient was brought at the hospital, emergency bed and trolleys were full and therefore, patient party was requested to remove the patient to any nearby hospital. But they kept the patient there at their own risk and were waiting for their time to come. It is admitted that he patient was found dead at 8.10am and no doctor of their hospital assessed the patient before to ascertain whether he was gasping or not.

Dr Suvodip Maity is a junior consultant attached to the emergency department of Apollo and in the pay roll of the said hospital. On January 17, 2018, his duty was till 9am in the morning. On that day around 7.43am, the patient's relative came to him with his medical papers and informed him that the patient had been brought to the hospital and lying in the ambulance parked at the compound. They wanted that the patient be examined by the doctors. Going through the medical papers of the patient and from the communication of the patient party, he understood that the patient was suffering from respiratory distress from last evening. As there was neither a bed nor even trolley available in the emergency, the patient party was asked to take the patient to any nearby hospital. At that time he was quite busy with three other ventilator patient, who were lying in the emergency from last day. The referral was made verbally not in writing. After about 20 minutes, the patient party returned to the emergency and asked him to examine the patient. Then Dr Rohit, an Emergency Medical Officer was sent to the ambulance for examination of the patient. Dr Rohit went and after examining the patient reported back that the patient was not responding. When a trolley was arranged and the patient was brought in the emergency and found dead. At the hospital, the patient was not offered any treatment.

7. Admittedly, the husband of the complainant was a follow up patient of Apollo. He was attending Apollo and getting his treatment and advised from the consultants attached with the said nursing home on regular interval since 2015. Even on day before the date of incident, i.e. on 16.01.2018, the patient attended Apollo OPD and consulted Dr P C Mandal. When Dr Mandal examined the patient and advised to stop one injection and to continue other medicines and to report for review after 10 days. In his statement made on oath, Dr Suvodip Maity, Junior Consultant attached to Apollo and was present at the emergency, admitted without any haste that the patient party met him at emergency with his all medical papers and due to non-availability of beds in ICCU, wards and emergency, he asked them to take the patient to any nearby hospital. He also added even at that time no trolley was available and he was busy with three patients, who were in ventilator from the day before. In fact Dr Maity on such pretext tried to clarify why patient was not attended by the emergency doctor of Apollo. In our comprehension, firstly due to non-availability of bed and trolley and secondly he was

busy with three ventilator patients. It goes without saying that no hospital has any compulsion or obligation to accommodate a patient when beds are not available. However, non-availability of bed is one thing and non-attending a critically ill and moribund patient is another. Non-availability of bed will not obliterate the hospital authority from its paramount duty and obligation to attend a critically ill and moribund patient and to provide lifesaving medical treatment and support (in this case the patient was a follow up patient of Apollo and emergency doctor admitted that all his treatment papers were shown to him). It needs no mention that it is one of the most fundamental duties of every hospital when a patient in such a critical condition brought to it, to attend the patient first by its medical professional and to give minimum life support care and after that if no bed is available, the patient be referred to some other nearby hospital, if advisable. It is wholly immaterial, whether chances of survival is there or not. We are unable to concede to the contention of Apollo, since no empty trolley was available, the patient could not be taken to emergency and attended medically, for the simple reason that finally, at 8.10am when patient party once again approached Dr Suvodip Maity in emergency, he sent Dr Rohit to the patient in the ambulance and thus non-availability of the trolley was not at all an issue in attending the patient. Similarly, when Dr Rohit reported back to Dr Suvodip Maity that patient was not responding, a trolley was arranged and the patient was taken to the emergency where he was declared dead. This admitted position undoubtedly justify a conclusion that a critically ill patient, even when trolley is not available and without taking him in emergency can very well be attended by a doctor in ambulance when brought to the hospital premises, what has been done here finally but when the patient was not responding and not alive. No explanation is forthcoming, when the patient was found not responding from where and how a trolley was arranged so quickly, although not done earlier. One more very important fact cannot be overlooked that admittedly all treatment documents of the patient were shown to Dr Suvodip Maity at emergency. Therefore, there is no scope of denial that hospital authority was fully aware about the critical condition of the patient and the husband of the complainant was their follow up patient and attended OPD day before and needed immediate attention. Even assuming for the sake of argument the claim of the hospital is correct that the patient was brought at the hospital premises around 7.43am but facts

remain that the patient was attended in ambulance by a doctor from emergency around 8.10am i.e. nearly 27 minutes after. In a case of cardiac patient every moment is very crucial and counts a lot and loss of 27 minutes is of quite significant. However, in their affidavit Apollo claimed that they provided all possible help and support to the patient from the time of his arrival at the hospital premises. But from the materials available from the records, we, however, do not find any support to such claim. No material is forthcoming to show that the patient was medically aided by the doctors of Apollo before his death. On the other hand, materials show that there was gross deficiency on the part of the emergency doctors of Apollo, who are in their pay roll to attend the patient on one pretext or other, knowing fully well, he was a follow up patient and has been suffering from critical heart disease. We already found that the non availability of trolley was one of the reasons for non attending the patient and bringing him in emergency is not at all tenable. On the face of the fact, after lapse of 27 minutes the patient was attended by emergency doctor of Apollo, Dr Rohit at ambulance and then the patient was brought to emergency in a trolley, they arranged.

We make it clear that when no bed is available in any unit of the hospital, no critically ill or moribund patient can be denied emergency lifesaving treatment and then only the question of referring the patient to any nearby hospital would arise due to non-availability of bed.

In this case, the patient was kept unattended in the ambulance for about 27 minutes and it is the case of the Clinical Establishment, not only any bed in ICCU but also no bed was available in the emergency and due to non-availability of the trolley the patient could not be brought to the emergency for emergency support. However, the facts remain finally one of the doctor from emergency attended the seriously ill patient and as he was not responding immediately a trolley was brought and he was taken to emergency and declared brought dead on examination. Therefore the plea on which the Clinical Establishment is now trying to justify its action is not at all acceptable.

In the above backdrop, we find that there is a gross deficiency in patient care service on the part of the Clinical Establishment, Apollo Gleneagles hospital. It is true that the complainant's husband, at the age of 55 years, was critically ill having suffering from various

cardiac and other complications and was referred to Sir Gangaram Hospital, New Delhi for lung transplantation assessment by a doctor of the Apollo under whom he was a regular patient. Even on the face of such fact, the medical obligation of the Apollo to attend him and to provide him minimum medical support without any loss of time does not stand obliterated.

Therefore, this is a fit case for awarding compensation.

Considering the nature of disease the husband of the complainant was suffering from, his age and the nature of deficiency, we are of the opinion if a sum of Rs.100,000/- is awarded as compensation that would sub-serve the justice.

Such amount of compensation shall be paid to the complainant within 15 days from this date.

Thus, the case stands closed and disposed of.

Sd/-
Justice Ashim Kumar Roy
Chairperson.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Pradip Kumar Mitra, Member.

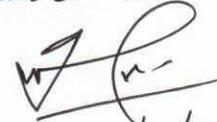
Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Dr. Maitrayee Banerjee, Member.

Authenticated



11/9/2018

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