

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

COMPLAINT ID: HOW/2017/000084/164.

Mr. Gopal Bose.....Complainant.

-versus-

People's Medi-treat Pvt. Ltd. & Others.....Respondents.

Date of judgment: 20th Nov, 2018.

J U D G M E N T.

The complainant, the father of the service recipient Ms. Trisha Bose, aged about 16 years approached the Commission, alleging that due to wrong treatment by the doctor and deficiency in patient care service on the part of the Clinical Establishment, People's Meditreat Nursing Home, his daughter died untimely.

2. It is the specific case of the complainant, as it appears from his letter of complaint and the complaint in the form of affidavit that on 20.5.2017 at around 12.30am (midnight), his daughter, service recipient was taken to People's Meditreat Pvt Ltd., a nursing home situated at Shibpur, Howrah with a complaint of acute abdominal pain. She was then admitted in the said nursing home under Dr.S. Saha and Dr. A. Choudhury. It is the further case of the complainant that as advised by the doctor, sometime in the morning, she was taken to a private clinic (Kalpana Clinic) for USG. Thereafter, the complainant met the treating doctor, Dr.Arunangshu Choudhury and the doctor told the complainant that there is

Nothing to worry and she will be discharged on the next day. As prescribed by the doctors, the complainant arranged for all the medicines and left the nursing home. At around 4pm in the afternoon, the wife of the complainant received a call in her mobile from the nursing home, when she was intimated that their daughter had a fall and her condition is critical and she had been shifted to ICU. On receipt of such information, the complainant and his relations rushed to the nursing home and reaching there they came to learn that their daughter had already expired.

It is alleged due to wrong treatment and use of wrong medicines as prescribed by Dr Arunangshu Choudhury and deficiency in patient care service by the nursing home authority more particularly, from the end of the nursing staff, their daughter had to suffer an untimely death.

3. The nursing home authority, in their affidavit in reply, stated as follows,

The patient, (Ms. Trisha Bose) on May 20, 2017 around 1am (Midnight) was brought to the emergency of the nursing home with complaint of severe pain in the abdomen. At the emergency, she was attended by their in house RMO. Immediately, she was admitted in the female ward under Dr. Arunangshu Chowdhury jointly with Dr. Subrata Saha. Dr. Chowdhury, who was physically present at the nursing home at that time, attended the patient and advised for necessary treatment. On the next morning, she was sent to Kalpana Clinic for urgent USG of abdomen and was returned to the nursing home after the procedure. At around 2.30pm Dr. Chowdhury again attended the patient and had a talk with the patient party about her condition and treatment. The advice of Dr. Chowdhury was followed by the nursing home staffs. Around 2.45pm the patient wanted to pass urine and in spite of repeated requests by attending nursing staffs and ward attendants, she refused to use bedpan. As she was going to the toilet on her own, which was just beside her bed, the patient attendant, however, followed her (holding saline bottle in her hand) up to the toilet door and was standing outside the toilet to maintain the privacy. While coming out from the toilet, the patient suddenly fell down from her standing posture. The attendant, Ms. Ashima Sarkar tried to prevent her fall but failed to manage the situation.



Immediately, the attending nursing staffs shifted her to bed and ward RMO was called. On the advice of the Ward RMO, she was removed to ICU. Both the doctors, Dr. A. Chowdhury and Dr. S. Saha was informed and they also rushed to the hospital and took all emergency critical care measures but unfortunately, the patient at around 4.10pm expired.

It is further alleged that soon after her death, a group of miscreants attacked the attending doctors, the nursing and paramedical staffs and assaulted them and many of them sustained bodily injuries. Those miscreants also ransacked the nursing home and damaged medical equipments, accessories and furniture at ICU and caused considerable losses. However, at the intervention of local police the situation was appeased.

3. During the course of hearing, the attendant Ms. Ashima Sarkar was examined on oath. According to her, she accompanied the patient to the toilet as the patient did not agree to use bed pan and insisted to go with running drip and while coming back she fell on the deponent and then on the ground.
4. In this case after the incident, an FIR was lodged by the complainant against Dr. Arunangsu Chowdhury, Nursing home authority and the on duty nurses and the Shibpur P.S. Case No.251/2017 was registered and post-mortem was held.
5. Dr. Chitta Ranjan Bhattacharjee conducted the post-mortem and he noted the following injuries found on the dead body,

- a) Abrasion on lower lip inner side $\frac{1}{4}'' \times \frac{1}{4}''$.
- b) Scalp hematoma on right parietal region, diffused in nature of $2\frac{1}{2}'' \times 2''$.
- c) Scalp hematoma on left parietal region $1'' \times 1''$.
- d) On dissection: Subdural hematoma of $1'' \times 1''$ with flattening of sulcus and obliteration of Zyrri.



The autopsy surgeon, Dr. Chitta Ranjan Bhattacharjee was also examined on oath by the Commission. In his deposition, he stated that injuries found on the dead body might be the cause of death and he did not find any evidence that the patient was suffering from any cardiac ailment as the heart was healthy.

7. It appears that the police investigation in connection with Shibpur P.S. Case No.251/2017 is still continuing.

8. An enquiry was held by a committee constituted by the CMOH, Howrah. The committee came to the following conclusion,

"Considering all aspects the Enquiry committee could not find any gross negligence in the management of Miss. Trisa Bose, as per record available. However the actual sequence of events that led to the terminal events of Ventricular Tachycardia may be elucidated when FSL report of Viscera preserved made available."

9. The Members of the Commission having medical expertise examined the case records and gave their valuable opinion.

10. On perusal of the BHT, we find that the patient Trisha Bose (since deceased), the daughter of the complainant, was admitted in the nursing home (People's Medi-treat Pvt. Ltd.) between 12.30 am to 1 am (at midnight) on 20.05.2017 with severe pain in abdomen. She was first attended by the on duty RMO at emergency and then on the same night by Dr. Arunangsu Chowdhury, one of the doctors under whom she was admitted. The patient was treated following the standard treatment protocols and guidelines and was medicated as per guidelines. On the next morning, her USG was done in an outside clinic. From the clinical notes dated 20.05.2017, we do not find any remote indication of adverse medical condition, on the other hand, parameter noted shows that she was recovering well. According to the complainant, on 20.05.2017, at around 2.30pm, he met Dr Arunangsu Chowdhury under whom

s daughter was admitted and Dr Chowdhury also informed him that she was recovering well and shall be released on the next day. The claim of the complainant what has been told to her by Dr Chowdhury has not been disputed by the nursing home authority in their affidavit in reply. The case of the complainant that after returning home, his wife received a call in her mobile from the nursing home that her daughter had a fall and her condition is critical and she has been shifted to ICU, and reaching the nursing home, they came to learn that their daughter had already expired. This part of the case of the complainant has also not been disputed by the nursing home authority in their affidavit in reply.

11. Now from the affidavit in reply of the nursing home authority, we find, without disputing the fact that before her death the daughter of the complainant had a fall, a specific case has been made out that at around 2.45 pm, while the patient was on drip, she wanted to pass urine but refused to use bedpan and on her own tried to go to the toilet, when the ward attendant having noticed that, accompanied the patient holding the saline bottle in her hand with IV fluid running and was waiting outside, with the doors of the toilet half closed. However, while coming out from the toilet, the patient first fell on the attendant and then on the ground. The above facts have been corroborated by Ms. Ashima Sarkar while giving statement on oath before the Commission.

12. However, on perusal of the clinical notes, recorded on or about time of incident, we find the words "*sudden fall*" were noted and then struck out. Instead thereof words "*Pt tends to vertigo during coming from latrine*" were inserted. The entire above note on face of it found to be in hand writing of the same doctor. It is evident from the clinical note that the patient was forthwith removed to the ICU. Now from the ICU notes and the course of treatment provided to the patient were in the line of '*Ventricular Tachycardia*'. Furthermore, the cause of death was noted as '*Ventricular Tachycardia of unknown Aetiology*'. In the entire clinical note, there is no remote indication of an episode that the patient had a fall and she had sustained external injuries. However, according to the post-mortem reports and the statement of the Autopsy Surgeon made on oath before the Commission, we found

three external injuries, (a) Abrasion on lower lip side $\frac{1}{4}$ "x $\frac{1}{4}$ "; (b) Scalp hematoma on right parietal region, diffused in nature of $2\frac{1}{2}$ "x2" and (c) Scalp hematoma on left parietal region 1"x1" apart from a subdural hematoma of 1"x1" with flattening of sulcus and obliteration of gyri, found on dissection. In addition to above, according to him, the heart of the patient was healthy and there was no sign that the patient was suffering from any cardiac ailment. The Autopsy Surgeon gave his statement before the Commission in presence of the authorized representative of the nursing home, however, the statement of Autopsy Surgeon was not challenged and his cross-examination was declined. Thus, the clinical notes clearly indicates that there was an unholy attempt on the part of the nursing home authority to conceal the fact that the patient had a fall and sustained several injuries on her head, a vital part of her body, which however, they admitted in their reply and supported by one of their employee Ms. Ashima Sarkar and further by the Autopsy Surgeon. Undoubtedly, such malafide attempt has been made by the nursing home authority to cover up their fault and to get rid of the responsibility. This is purely unethical.

13. Although in the medical records, there was no reference that the daughter of the complainant had a fall and sustained several external injuries on her head, an attempt has been made on the part of the nursing home authority to explain that the death of the patient was due to '*Ventricular Tachycardia of unknown Aetiology*' but in their affidavit in reply and by examining the ward attendant Ms. Ashima Sarkar, tried to shift the onus of the unfortunate incident on the service recipient herself. It is now their case that on or about the time of incident, when the service recipient, the daughter of the complainant was on drip, she had a nature's call but refused to use bed pan and on her own tried to go to the toilet with running IV fluid. It is their further case that having noticed that, one of the female attendant accompanied her to the toilet holding the IV Fluid bottle in her hand and when she was coming out from the toilet she fell on the attendant and then on the ground. In short, it is the case of the nursing home authority, the patient died not due to any negligence or deficiency on their part but due to the reason of the service recipient. The female attendant, Ms. Ashima Sarkar, who accompanied the patient at the

me of incident, was examined before the Commission and she reiterated the case of the nursing home and her statement was not disputed by the complainant.

Be that as it may, the refusal of the service recipient to use bed pan while on drip and insisting to use toilet, cannot be taken to be an excuse for abdicating the responsibility of the nurse and ward attendant to prevent her. We conclude, even if we agree, that due to the reason of service recipient, who first refused to use bedpan and then went to the toilet on her own and while returning fell on the ground and sustained injuries, that in no way diminishes the primary responsibility and deficiency in service on the part of the nursing home authority. The breach of duty on the part of the staff of the nursing home associated with patient care service to take the basic care and not to allow a patient on drip to walk from bed to toilet to attend nature's call, even in the backdrop of the case of the nursing home, never stands diluted. To that extent, the question of applying the principle of contributory negligence, and exonerate the nursing home from the charge leveled against it does not arise. It may, however, have some role for the purpose of assessing damage and quantifying the compensation.

14. Now considering the above fact and taking into account all the attending circumstances, we are of the opinion awarding a sum of Rs.10lakh as compensation would sub-serve the ends of justice.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Authenticated

[Signature]

ARSHAD HASAN WARSI
WBCS (Ex)

Secretary
W. B. C. E. R. C.