

**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.

Dr. Pradip Kumar Mitra, Member.

COMPLAINT ID: BIR/2018/000331.

Mr. Ananda Pathak.....Complainant.

-versus-

Balaka Health Care Diagnostic Centre.....Respondents.

Date of judgment: 20th Nov, 2018.

J U D G M E N T.

According to the case of the complainant, as it transpires from his complaint in the form of affidavit, that his wife the service recipient Papia Pathak Roy, after conceived for the first time, in July 2017, was under the treatment of Dr. Keya Bagchi, Consultant Obstetrician and Gynecologist. According to the advice of Dr. Bagchi, all investigations were done and she was regularly taking medicine. On 04.03.2018 at around 8 am in the morning, she was admitted at Balaka Health Care and Diagnostic Centre for delivery under Dr. Keya Bagchi as she advised. Around 10.30 am on that day, a baby was born by cesarean section and at 12.30 pm she was shifted to general ward. However, from 3 pm she became restless and complained

uneasiness to him and their other relations. Around 5 am her condition became more serious and she started sweating with other complaints. Immediately the nursing home authority was informed. Initially they told that those are very common and need not to be worried and when in the evening they were insisted, the complainant was informed that Dr. Bagchi has already been contacted and she would attend the patient at her earliest. Till 8.30 pm, since Dr. Bagchi did not attend the patient, the complainant contacted Manager Partha Sarathi Kar and he was assured that Dr. Bagchi will come very soon. From 11pm her condition became worse and she started complaining pain in her chest and lower abdomen. When around 11.30 pm one of the sister administered one injection which for sometime reduced the intensity of the pain. Around 12 midnight her condition became precarious but still no arrangement was made for any medical advice. No other doctor or the RMO examined her. In the next morning, her condition became more critical and around 6.10 am she became unconscious and non-responsive. Thereafter, around 6.30 am Dr. Keya Bagchi arrived at the nursing home and declared her dead.

From 10.30 am on March 4, 2018, till the service recipient was declared dead on March 5, 2018 around 6.30 am Dr. Keya Bagchi never visited and attended the service recipient nor any alternative arrangement was made for her medical treatment. The nursing home authority was also repeatedly requested for providing minimum medical care to the patient but nothing was done by them.

Due to utter negligence and complete carelessness of Dr. Keya Bagchi, the owner Mr. Tapan Roy and Manager Partha Sarathi Roy, the wife of the complainant died.

The nursing home as no RMO, GNM or properly nursing staffs and life support system and it was not known to them and only on the advice of Dr. Keya Bagchi, they admitted the patient at the said nursing home.

The said nursing home was running without any basic health care system with the help of Dr. Keya Bagchi for unlawful gains.

2. In response to the above complaint, the respondent-nursing home filed their reply.

In their reply, the nursing home authority flatly denied all the allegations made by the complainant. It is claimed that Balaka Health Care and Diagnostic Care is a reputed nursing home and was running under proper license granted by the appropriate authority. There are three numbers of GNM and six numbers of ANM and three RMOs. Out of three RMOs two have resigned. It is claimed at the hospital not only they are providing all medical care to the patient and everything is on record. The wife of the complainant, on 04.03.2018 was admitted in the said nursing home for delivery of her first child under Dr. Keya Bagchi and Dr. Bagchi sincerely cared for her treatment and around 10.30 am she gave birth to a female child. After delivery, medical condition of both the child and the patient was well, however, ultimately on the next day i.e. on 05.03.2018 at around 6 am the patient died. Dr. Bagchi was informed, who attended the patient and declared her dead. The allegations of negligence in treatment and deficiency in service as well as the nursing home is not properly equipped are absolutely false.

It is alleged that no payment was made by the patient party for the treatment of the service recipient.

In their reply the nursing home authority claimed that after the death of the service recipient the complainant and his associates rampaged the nursing home and caused huge damage and loss to the furniture, fittings and medical equipments and destroyed the medical records. Following the incident an FIR has been lodged with the Bolpur Police Station and Bolpur P.S. Case No.18/2018 u/s 448/323/427/379 and 34 IPC has been registered.

A committee was also formed by CMOH, Birbhum for inquiry into the matter and inquiry was held and completed.

3. So far as the police case is concerned, none of the parties could inform us about the outcome thereof and in all likely, the investigation is still continued.

We however, got the inquiry report of the committee formed by the CMOH. On perusal of the said inquiry report we do not find that any definite conclusion has been reached by the committee except that the cause of death can be confirmed only after post-mortem.

The enquiry committee, however, observed various lapses on the part of Dr Keya Bagchi and the nursing home, Balaka Health care.

4. During the hearing before the Commission both the proprietor of the nursing home Mr. Tapan Roy and the Consultant Obstetrician and Gynecologist Dr. Keya Bagchi were examined.

a) According to the proprietor of the nursing home that he was running the nursing home under proper license issued by the appropriate authority and after the incident on and from March 5, 2018 the said nursing home has been shut down.

In his deposition he admitted that there is no post-operative note in the Bed Head Ticket regarding the parameters of the patient and the nature of the treatment provided to her. He further stated that the nursing home commenced functioning since May 2016 with 3 RMOs, however, on the date of the incident an Orthopedic Surgeon, Dr. Ashwini Chowdhury was the only RMO associated with it. He further admitted that although Dr. Ashwini Chowdhury was working as RMO but he was not under the employment of the nursing home nor used to receive any salary from it. He only used to see his own private patients. He further stated that after the delivery, the patient was duly attended by ward sisters but in spite of repeated information, Dr. Keya Bagchi did not turn up until 6.50 am in the morning on the next day of delivery and declared the patient dead. He further admitted that there was no note in the treatment sheet about the post-operative care provided to the patient by the ward sisters and that her condition was communicated to the doctors. He claimed that he shall be able to produce the call chart to show during the post-delivery period he contacted Dr. Keya Bagchi. At the relevant time there was no GNM nurses and patient was looked after by ANM nurses but unable to tell their names and other particulars. Since the nursing home has been closed he would not be able to ensure the presence of those nursing staffs. He further admitted that after cesarean section till her death, the patient was not attended by any doctor. He tried to contact Dr. Keya Bagchi who referred and got the patient admitted in the nursing home.

b) According to Dr. Keya Bagchi, she admitted the patient for elective cesarean section on 04.03.2018 at Balaka Nursing Home and that was the only empanelled 'B' category nursing home under Swasthya Sathi Scheme available in Bolpur town. She further admitted that there is no record of pre-operative check and in the BHT nothing was noted about the status of the

patient before operation. The post-operative note was recorded by anesthetist. She only advised for the medicine Nicardia. She used to come at the nursing home on evening round but on that day she was sick and could not come. Nursing home authority had not informed her anything until 6 pm till next day. It is also stated by her that on the day of operation she received a call from Partha Sarathi Kar, the Manager of the nursing home in respect of another patient. At that time, she inquired about the status of the patient and, thereafter, she received no further call from the nursing home. After reaching he nursing home she found that the patient was clinically dead. She however tried CPR and then shifted the patient to OT but such facts was not noted in the BHT.

5. The Members of the Commission having medical expertise actively participated in the deliberation and provided their valuable opinion which has been duly taken into consideration by the Commission to reach to its conclusion.

6. It appears from the records that the patient, having primigravida near term, was attending Dr. Keya Bagchi for her regular antenatal check up. Thereafter, on 04.03.2018 at around 8 am in the morning she was admitted at Balaka Health Care under Dr. Keya Bagchi and at around 10.30 am the only category 'B' nursing home empanelled under Swastha Sathi Scheme in the town of Bolpur. When she was admitted in the hospital she was having hypertension and edema. The patient underwent LUCS on the same day. However, there is no record of the details of the pre-operative checkup done either by Dr. Keya Bagchi or any RMO attached with the said nursing home. There is no record in the BHT regarding operation note and post-operative status of the patient. Dr. Bagchi admitted such facts and stated the post – operative advice was written by the anesthetist and she added tablet Nicardia in view of high

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blood pressure of the patient. There is nothing on record to show that during the post-operative period the patient was either attended or seen by Dr. Keya Bagchi or any RMO attached to the said nursing home until she was declared dead on the next day 05.03.2018 at around 6.50 am. When the condition of the patient was deteriorating during the post-operative period, Dr. Keya Bagchi did not visit the patient. She claimed that in the evening she had a talk with the nursing home authority regarding discharge of one of her patient and at that time she informed him that she was sick and could not be able to come and to arrange another doctor for the patient. It goes without saying, having regards to the fact that the patient was attending Dr. Keya Bagchi in her chamber for her regular antenatal checkup and on her advice she was admitted at Nursing Home, Balaka Health Care, Dr. Keya Bagchi was primarily responsible for arranging the doctor in her absence for post-operative care. There is no dispute that no doctor can visit and attend a patient, when such patient was undergoing treatment under another doctor, unless the treating doctor refer the patient to that doctor. Dr. Keya Bagchi in her statement before the Commission admitted that all post-operative direction was noted in the treatment sheet by Dr. Dipanjan Bagchi, anesthetist and she only added capsule Nicardia. Therefore, when Dr. Keya Bagchi fell ill and was unable to go to the nursing home for evening round, she could have requested Dr. Dipanjan Bagchi, anesthetist who is a qualified MBBS and in West Bengal Health Services to go for round and consulted her for future course of action. Undoubtedly, the role of Dr. Keya Bagchi as a medical practitioner is highly deplorable. However, on the face of the provisions of first proviso to sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 and the issue being beyond the purview of our adjudication, we restrain us from giving any further findings on merit in this regard.

Now coming to the question whether there was any deficiency in patient care service on the part of the Clinical Establishment, we unhesitatingly hold that same is manifest from the materials on record. There has been extreme lack of care by the clinical establishment in management of this patient during the post-operative period. A licenced nursing home with 60 beds was running without any regular RMO available round the clock. In fact, admittedly there was no RMO in the pay role of the nursing home. No doctor attached to the nursing home in any capacity had attended and examined the patient during the pre-operative and postoperative period till her death. The proprietor of the nursing home admitted at the relevant time there was no RMO on duty at the nursing home. He further admitted the only RMO associated with the nursing home was an orthopedic surgeon and not under their employment and in their pay roll and used to come to the nursing home for attending his own patients. Two GNM staffs who are on the pay roll of the nursing home were absent on both the days i.e. on the day when cesarean section was done and the patient delivered the child and on the day of her death. The nursing staffs who were purportedly taking care of this patient are all unqualified and not registered with WBNC. Those unqualified nurses failed to recognize the cardinal symptoms and signs of deterioration in this patient. They did not communicate with the doctor and the management for attending the patient during the crisis period. From about 3 pm on 04.03.2018 during the post operative period while the patient was at the ward she was distressed, restless and sweating. Feature of shock was apparent from internal bleeding from the site of cesarean section but she was not attended by any doctor arranged by the nursing home. We have already noted that the patient was not taken care by any qualified nurse. The patient died on the following morning on 05.03.2018 without any treatment due to shock and bleeding from the site of cesarean section.

We are of the definite opinion that the death could have been averted, if the patient was attended and properly treated as soon as her condition started deteriorating during the post-operative period. Therefore, this is a fit case for awarding compensation to the complainant.

7. It is an admitted position on and from the day of occurrence the nursing home, Balaka Helath Care, situated in Bolpur town, has been shut down. The service recipient, aged about 28 years, used to work as a Resource Person to train Self- Help Group Participants bi-monthly against honorarium. The complainant is a small trader and used to supply food items to different shops.

8. Now considering the extent of deficiency in patient care service on the part of the Clinical Establishment as above and taking into account the other attending circumstances, namely, loss of income due to the death of the service recipient and the loss accrues by the baby, who is now aged about little more than 1 year and her contribution to the family, we are of the opinion if a compensation of Rs.10 Lakh is awarded that would be just and proper.

9. We, however, make it clear that we have not gone into the merits of the case against the treating doctor, Dr. Keya Bagchi and not fixed her liability in view of the second proviso to sub-section (III) of section 38 of The West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017. It shall be open to the complainant to approach the West Bengal Medical Council and the Consumer Forum for further relief in accordance with law as may be advised if not taken recourse to the same.

10. Last but not least, we direct that the above compensation amount shall be kept deposited by the Clinical Establishment, in a fixed deposit account which is now to be opened by the complainant jointly with the baby, born to the deceased Papia Pathak Roy with the State Bank of India (Bolpur Branch) and in no event that amount shall be withdrawn until the baby attains her majority. We also make it clear after she attains majority, she shall be the sole beneficiary of the above amount. However, the complainant shall have the liberty to utilise, the interest amount that would be accrued out of that fixed deposit amount for the benefit of the baby and for her upbringing.

Office is directed to communicate this order also to the State Bank of India (Bolpur Branch).

Sd/-
Justice Ashim Kumar Roy
Chairperson.

Sd/-
Dr. Sukumar Mukherjee, Member.

Sd/-
Dr. Makhan Lal Saha, Member.

Sd/-
Dr. Madhusudan Banerjee, Member.

Sd/-
Dr. Maitrayee Banerjee, Member.

Sd/-
Dr. Pradip Kumar Mitra, Member.

Authenticated


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