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: NPG/2017/000230.

Mr. Dibyendu Poddar.....Complainant.

-versus-

Suraksha Diagnostic Pvt. Ltd./ILS Hospital.....Respondents.

Date of judgment: 3rd January, 2019.

J U D G M E N T.

1. **The case of the complainant**

The complainant's wife Mrs. Sudershana Poddar (36 years) was under treatment of Dr. Kasturi Bhowmick attached with Divine Polyclinic. In the month of December, 26th, 2016, she was advised for the USG by the said Doctor and USG was done at Suraksha Diagnostic centre private limited. As per report of the aforesaid USG Dr. Kasturi Bhowmick started treatment of ovaries through medicine. Later on 5th June, 2017 she adviced for another USG to know the

improvement. As advised by the treating doctor further USG was done at the same diagnostic centre i.e Suraksha Diagnostic Centre Private Limited on 15th July, 2017. As per report of the said USG, Dr. Kasturi Bhowmick informed the patient party that condition of the patient has deteriorated and advised for immediate operation. The patient was admitted at ILS Hospital, Salt Lake on 01.09.2017 and the operation was fixed to be done on 02.09.2017. But during the said operation Dr. Kasturi Bhowmick informed the complainant that there is no cyst in either ovary of his wife. She also said that both the report of Suraksha Diagnostic centre private limited were wrong. It is the contention of the complainant that due to the wrong report his wife had to undergo operating procedure and harassment. He prays for a compensation of Rs.12 lakhs.

2. **The case of the Clinical Establishment, Suraksha Diagnostic Centre**

The diagnostic centre has replied that the patient had an ultrasound done by Dr. Mousumi Roy Chowdhury for pelvic organs on 31.12.2016 on basis of a referral by Dr. Kasturi Bhowmick. The report showed that the patient had features of both polycystic ovaries and an endometriotic cyst in left ovary besides retroverted uterus with fibroid.

The second ultrasound done on 15.07.2017 by Dr. Gautam Ghosh on the basis of referral by Dr. Kasturi Bhowmick.

It is further contended that Ultrasound as a modality has limited sensitivity and specificity in diagnosing adhesions which can't be seen so an ovarian cyst adherent with surrounding tissues (mesenteric fat likely) will appear large and even as a mass lesion. Secondly endometriosis is a dynamic progressive disease process changing severity extent with each menstrual cycle.

As no previous ultrasound report nor any patient's history was made available or furnished before performing the second ultrasound, the differential diagnosis of enlarged cystic ovary with fatty tissue components was postulated, however, inferred as ovarian cyst in impression.

It has been asserted that both the ultrasound procedures were performed right, with no omission. It states that if the previous ultrasound report had been available, it would have ruled out the differential of dermoid cyst which are present from birth congenitally.

3. **The response of Kasturi Bhowmick**

According to Dr. Kasturi Bhowmick, the treating doctor that she did the procedure and a total charge of Rs.50,000/- was taken for it. It included Rs. 5,000/- for Anesthetist charge, Rs.30,000/- for surgeon charge, pre and post operative visit charge Rs.5,000/-. First assistant Surgeon charge Rs.7,000/-, second assistant charge Rs.3,000/-.

4. **Conclusion**

Patient, Mrs. Sudarshana Poddar went to Dr. (Mrs) Kasturi Bhowmick, Specialist Gynecologist on with complain of scanty menstruations over 1 to 2 cycles. The treating Doctor, Dr. (Mrs.) Bhowmick advised USG on 26-12-2016. USG was done at Suraksha by Dr. M.Roy Chowdhury (Saha) on 31 -12 -2016. The diagnostic impression was (1) Bulky retro-verted uterus with thickened endometrium (2) Polyeystic ovaries (3) Left ovarian complex endometriotic cyst & (4) Intramural uterine myoma. Dr. (Mrs.) Bhowmick treated her with hormones and other medicines.

After about 6 months i.e. on 05-06-2017, Mrs. Poddar went to Dr. (Mrs.) Bhowmick for check up, who advised 2nd USG. The 2nd USG was done on 15-07-17 at Suraksha by Dr. Goutam Ghosh. His impression on USG was left sided ovarian cyst, and in addition there was a dermoid cyst in the right ovary. Thereafter, Dr. Ghosh advised further Hormone therapy and also laparoscopic operation immediately. Accordingly, Dr. Ghosh performed Laparoscopy on Mrs. Poddar on 02-09-2017 at ILS Hospital. The laparoscopic procedure revealed no pathology in the pelvis or in the abdomen. So, it was a "negative laparoscopy" done based on wrong diagnosis.

Incidentally, laparoscopy is an invasive surgical procedure done under General Anesthesia and has inherent risks associated with it and also involves mental trauma and physical sufferings and top of everything monetary implications.

We find from the medical papers that patient on the advice of her treating doctor, Dr. (Mrs.) Bhowmick went to Suraksha for her USG and the procedure was done by the Sonologist, Dr. Goutam Ghosh on 14.07.2017 and his wrong report led the patient to undergo an invasive surgical procedure which was done under general anesthesia.

Thus, there was flagrant deficiency of service on the part of the Establishment in the USG diagnosis by Sonologist, Dr. Goutam Ghosh, under their employment.

On being asked by one of the Member of the Commission having medical expertise in the particular field, Dr. Goutam Ghosh to comment on his USGs findings, instead of answering on the points, he said that the patient was a case of Endometriosis, which according to the medical Member of the Commission was just to mislead the Commission.

In their reply, it was contended by the clinical establishment, Suraksha Diagnostic Pvt. Ltd. as no previous ultrasound report nor any patient history being available or furnished before performing the second ultrasound. It was further contended, had the previous ultrasound report been available second time, it would have ruled out the differential of dermoid cyst which are present from birth congenitally. In our opinion, such contention of the clinical establishment is without any substance and unsound and therefore merits no consideration. It goes without saying, before any medical procedure like USG is undertaken by any Sonologist, it is his obligation before commencing such procedure to collect the history from the service recipient and if it is not done the liability casts on such Sonologist. We failed to understand if the Sonologist had been told about the first USG report in which wrongly a cyst was detected that would ruled out his conclusion that there was a cyst although the patient had no cyst.

Having regards to above, undoubtedly, there is a clear deficiency in patient care service so far as the wife of the complainant is concerned on the part of the diagnostic clinic Suraksha and this is a fit case for awarding compensation.

4. **Compensation**

We find that the complainant was charged Rs.950/- for USG and for surgery Rs.83,356/- by ILS Hospital, Salt Lake. Out of the above amount of Rs.83,356/-, a sum of Rs.73,013/- was paid by the Insurance Company and the balance amount of Rs.10,343/- was recovered in cash

from the complainant. The complainant has also paid to the diagnostic centre, a sum of Rs.950/- for the USG.

Now, considering the inherent risk involved in the operation, which the complainant's wife had to face due to the wrong report of USG and the mental trauma and physical sufferings she had to undergo in such operation coupled with the monetary expenses the complainant had to bear and the litigation cost, in our opinion it would be justified to award a compensation of Rs.50,000/- to be paid by the clinical establishment, Suraksha Diagnostic Centre to the complainant within 15 days from this day through an account payee banker's cheque and shall report compliance.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Sd/-
Dr. Sukumar Mukherjee, Member.

Sd/-
Dr. Makhan Lal Saha, Member.

Sd/-
Dr. Pradip Kumar Mitra, Member.

Sd/-
Dr. Madhusudan Banerjee, Member.

Sd/-
Dr. Maitrayee Banerjee, Member.

Authenticated

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