

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

Dr. Gopal Krishna Dhali, Member.

Dr. Madhusudan Banerjee, Member.

Dr. Pradip Kumar Mitra, Member.

COMPLAINT ID: HOW/2017/000009.

Mr. Anupam Sarkar.....Complainant.

-versus-

Fortis Hospital.....Respondents.

Date of judgment: 3rd January, 2019.

J U D G M E N T.

It is the case of the complainant that his wife, Aditi Ghosh Sarkar, was admitted at Fortis Hospital, Anandapur for removal of gallbladder stone on 01.03.2017 under the supervision of Dr. Dhrubojyoti Bhowmick under a package of Rs.173000/- with a stay of six days on 03.03.2017. Dr. Bhowmick performed the surgery for removal of stone in the gallbladder. After the operation, it was informed by the doctor and the hospital that it went off without any complication and it was assured that the patient will be released by 06.03.2017. On 05.03.2017, the complainant came to know on his visit to the hospital that the patient was

having respiratory problems. On the same day, the complainant was informed over telephone at about 7.45 pm that the condition of the patient was deteriorating and shifting to CCU is required. On 06.03.2017, the patient was put on mechanical ventilation. Since then till death on 22.04.2017, she was under ventilation with subsequent tracheotomy since 08.03.2017. It is stated that the doctors, particularly, Dr. Bhowmick was difficult to approach. He did not attend the patient when the condition of the patient deteriorated on 05.03.2017. He also did not visit the patient on the last date i.e. 22.04.2017. Dr. Bhowmick held that the patient had developed acute pancreatitis while other two doctors involved in the treating process had different views. It is alleged that the doctors never provided proper status of the patient during the entire stay. The patient became motionless on 22.04.2017 and ultimately the hospital declared the patient dead.

The complainant was provided with a bill of Rs.3306654/- by the hospital against the original package of Rs.173000/-. The patient party paid an amount of Rs.1188000/- through insurance provider and another Rs.40000/- in cash. It is further complained that after the operation, when the patient was in general bed on 04.03.2017 Dr. Bhowmick had asked for Amylaze and Lipaze test. Some test reports were available at 05.05pm on the same day and the views were higher than normal limits. However, strangely, Dr. Bhowmick or others did not consider it for treatment reference on the same day and not even during the next scheduled visit.

2. After receipt of the complaint, reply was sought from the Clinical Establishment and the doctor concerned in the form of affidavit and their replies are as follows,

The Clinical Establishment has denied all the allegations. It has been stated that there was no contradiction or anomalies in reply by the hospital or doctor and there was no contradiction between doctors. Dr. Debasish Dutta, not being the primary consultant or having any role in the laparoscopy operation, was not present in the OT and as such, he was not aware of the development of pancreatitis or any sort of complication during the surgery. Dr. Bhowmick also confirmed in his affidavit that Dr. Dutta was not present in the OT at the time of operation and as such, he was not aware of the development of pancreatitis or any sort of

complication during the surgery. He submitted that the patient was referred to Dr. Raja Dhar when respiratory problem occurred. He denied any kind of omission on the part of the respondent hospital or the doctor. The hospital authority confirmed that an amount of Rs. 1200000/- was received from the insurance provider and the complainant had made the initial deposit of Rs.40000/- and thus, the hospital has received an amount of Rs.1240000/- against the total bill of Rs.3290854/- and a sum of Rs.2050854/- remained outstanding. It is reiterated that rates and charges of the services provided by the hospital are well published in the tariff chart of the hospital which is kept at the in-patient billing desk for the consultation of the relatives of the patient. The billing in the said case has been done in accordance with the prescribed rates and relevant billing procedures.

3. This is a keenly contested case and several affidavits were exchanged between the parties and the case was heard on several occasions at length.

Now on hearing of the parties and considering their submissions, we find the case of the complainant rests on allegations of deficiency in patient care service, negligence in treatment and billing related issues.

Having regards to that written opinion was sought for from three members having medical expertise in the field. The same were received and the conclusions with the observations are reproduced below.

4. a) **Opinion of Dr. Sukumar Mukherjee,**

"I have gone through the summary of the observation about the patient Mrs. Aditi Sarkar, admitted at Fortis Hospital under the care of Dr. D.J. Bhowmick with a diagnosis of gallstone disease. Initially endoscopic sphincterotomy was attempted by Dr. Debasish Dutta, Consultant Gastroenterologist based on MRCP findings. No stone was retrieved. Then the patient underwent laparoscopic cholecystectomy by Dr. D.J. Bhowmick, the primary surgeon at Fortis Hospital for laparoscopic removal of gallstone. On Laparoscopy Dr. Bhowmick noticed evidence of acute pancreatitis in the form of saponification of peritoneum and presence of serosanguinous fluid in the peritoneal cavity. Both Amylase and Lipase were high. Post

operatively patient had a very stormy course with increasing breathlessness, hypotension anemia and other complications. Patient was managed in ITU with mechanical ventilation and other supportive measures. She had a prolonged stay in the hospital with repeated laboratory evaluation, multiple CT scan and bronchoscopy as per decision of the treating specialist doctors. However, patient could not be salvaged. In the Bed Head Ticket, various notes have been given at different dates which were not consistent all the times amongst the clinicians. Post-mortem, was done in this patient, which revealed intra-abdominal blood likely to be ante mortem in occurrence. This could be the leading to the fall of hemoglobin and hypotension. These are all part and parcel of the medical judgment of the treating doctors during the hospitalization.

In addition, charging money for CSR is grossly irregular. However, Clinical Establishment exempted nearly Rs.20 lakhs for residual payment from the patient party. In view of this, clinical scenario decision of the treating physician is supreme and medical negligence could not be taken into consideration in this Commission as per law. The party can go to other forum like Medical Council for redressal. I find no discrepancy in the billing. Finally the clinical establishment is only responsible for the CSR charges from the patient, which is irregular."

b) Opinion of Dr. Gopal Krishna Dhali,

- i. That Mrs. Aditi Ghosh Sarkar, 32 yrs. Old wife of Mr. Anupam Sarkar was admitted at Fortis Hospital, Anandapur, Kolkata-107, on 01/03/17 under Dr. D J Bhaumik for Gall bladder stone operation.(Page-15).
- ii. She underwent ERCP (Endoscopic Retrograde Cholangio Pancreaticography) and Endoscopic sphincterotomy for suspected (?) common bile duct stone on 02/03/17 by Dr. Debasis Datta at the same hospital. (Page-37, 622). During interrogation on 13/10/18, Dr. Debasis Datta mentioned that ERCP was done on the basis of M?RCP finding which says that there was suspicion of biliary sludge (Biliary granules)- Page no.19.
- iii. She underwent Laparoscopic cholecystectomy (Gall bladder removal) on 03/03/17 by Dr. D J Bhowmick at the same hospital. (page-39). During interrogation on 13/10/17, Dr. Bhowmick mentioned that there was evidence of acute pancreatitis in the form of

saponification of peritoneum and presence of serosanguinous fluid in peritoneal cavity which subsequently supported by high serum level of pancreatic enzymes (Amylase and Lipase on 04/03/17, Page-459,874).

- iv. On 05/03/17, she developed breathing difficulty (P-4/43/78) with 174/min pulse rate BP:160/80mm of Hg and planned to shift to ITU. Her Hb report came to be 3.8gm. CT whole abd. Revealed a big area of diffusely spread fluid on 06/03/17 (P-632/827).
- v. Subsequently, she developed the sequelae of severe acute pancreatitis and organ failure (Kidney-Page 877 to 879, Respiratory-Page-4)
- vi. It was also noticed from the treatment sheet (Page no.361 & 384) that the deceased was given injection analgesic at 10PM on 02/03/17 & at 2.15AM on 03/03/18. She also was given P-enema at 6AM on 03/03/18.
- vii. Pagination was also very irregular and clumsy.
- viii. She had also undergone CT examination nine times from 6th March, 2017 to 15th April, 2017 (Page 27 to 38).
- ix. She also had undergone bronchoscopy on 22/03, 24/03 & 07/04/17.
- x. Clinical Establishment also charged money to the service recipient for corporate social responsibility (CSR) which they admitted during interrogation.
- xi. Bill issues.

Therefore, it was felt that, clinical establishment failed to deliver it's service in the following way:

- i. There is discrepancy in the clinical note by the clinicians (page-2/15/36, 16/37, 17/38) and the treatment sheet (Page no-361/384). Clinicians mentioned that everything was normal where as it was found that patient was given pain killer injections and enema suggesting she was significant pain and abdominal distension which could have been due to acute pancreatitis.
- ii. The fall Hb. On 05/03/17 difficult to explain as only bleeding would have caused fall in blood pressure and CT abd. Did not show blood in the abdomen as blood has a different CT value which radiologist would have picked up. On the other hand increased pulse

rate, respiratory distress, abdominal distension can be explained by acute pancreatitis and systemic inflammatory response syndrome.

- iii. It was also thought that there a lot of needless investigations including nine CT scans and three bronchoscopies which not only bear heavy cost but also has known side effects.
- iv. Charging money for CSR is thought to be a gross irregularities in the art of the clinical establishment.
- v. Billing issues are also to be considered.

c) **Opinion of Dr. Makhan Lal Saha,**

"Patient Mrs Aditi Sarkar wife of Anupam Sarkar was admitted at Fortis hospital under Dr D.J Bhowmik with chronic cholecystitis and cholelithiasis and suspected choledocholithiasis on 1.3.2018. She was given an estimate of Rs.1.73 lakhs for this operation. ERCP was done by Dr Debashis Dutta on 2.3.2017.revealed only CBD sludge and no CBD stone was found.

Next day(3.3.2017) patient was taken up for laparoscopic cholecystectomy by Dr. D.J.Bhowmik. On introduction of laparoscope there was evidence of acute pancreatitis. However surgeon has completed the laparoscopic cholecystectomy.

On the 2nd postop day(5.3.2017) day patient's condition deteriorated and Hb level dropped to 4gm%. Patient was transferred to ICU and was treated afterward at ICU till 23.4.2017 till her death. Patient was seen by different consultant surgeons, critical care specialist chest physician, interventional radiologist and remained in ICU till her death. Patient underwent repeated CT scans, USG and other investigations during her stay.

The postmortem report revealed blood in peritoneal cavity and death was ascribed to this bleeding which was ante mortem in nature.

In view of hypotension and sudden drop of hemoglobin in 2nd postoperative day postoperative bleeding was a strong possibility. Although seen by a team of doctors at no point of time bleeding was suspected and surgical intervention was considered. There was failure of judgment on the part of the treating doctors and surgical intervention could have saved the patient.

In view of prolonged stay, huge number of consultation, repeated costly investigations, subsequent infection, use of high end antibiotics, ventilatory support the ultimate bill has gone to more than Rs.33lakhs. The patient party and Insurance Company have paid Rs. 12 lakhs. The prolonged stay and the subsequent protracted treatment at ICU was mainly due to failure of judgement on the part of treating doctors and it is improper to impose such huge bill on the shoulder of the patient party."

5. Now from the opinion tendered by three very respectable medical professionals, who are the members of the Commission, it is found according to the majority of them, whatever deficiencies found in the patient care service, are mainly due to the failure of proper judgment and assessment as to the medical condition of the patient by her treating doctors, that may amount to medical negligence on the part of the medical professional. To be more specific, their conclusions are quoted below,

"These all are part and parcel of the medical judgment of the treating doctors.".....(par Dr.Sukumar Mukherjee)

"There was failure of judgment on the part of the treating doctors and surgical intervention could have saved the patient.".... (par Dr. Makhan Lal Saha)

6. Whereas, according to Dr. G.K. Dhali,

"Therefore, it was felt that, clinical establishment failed to deliver its service in the following way"

Dr. Dhali in his written opinion summarized, on what count, he was of the opinion that clinical establishment failed to deliver its services.

According to him, there are discrepancies in the clinical notes by the clinicians and treatment sheets, in as much as, the clinicians mentioned everything was normal but patient was given pain killer injections and enema suggesting she was in significant pain and abdominal distension which could have been due to acute pancreatitis. However, there were no findings that such medicines were administered without being advised and prescribed by the treating

consultants and there is no supporting material to that effect also. In any event, in a case where parameters of a patient is shown to be normal and still some drugs have been administered and there was no proper assessment of medical condition of such patient, the onus, if any, is on the consultant, who prescribed such drugs and on none else. The above fact, if at all, tends to make out a case of medical negligence against a medical professional and is beyond our purview to adjudicate.

The next finding of Dr. Dhali that the parameters of the patient as on 5/3/2017 can only be explained due to acute pancreatitis and systematic inflammatory response syndrome. If such be the position same is also failure on the part of the treating doctors to correctly medically appreciate the medical condition of the patient. Whether, that is an error in judgment on the part of the treating doctors or amounts to medical negligence is a thing which is beyond our purview and can only be adjudicated by the concerned State Medical Council.

The other findings that there were a lot of needless investigations including 9 CT scans and 3 bronchoscopies which have not only created huge burden but also has known side effects. However, there are no findings that those investigations were done without the advice of the consultants, who were involved in the treatment of the patient. Both the consultants, Dr. D. J. Bhaumik and Dr. Debasis Dutta were present before the Commission and it was never brought out from them that without their advice, those investigations were done. The question remains whether such investigation was needed or not. This is also a matter which can only be adjudicated by the concerned State Medical Council as same is beyond the purview of this Commission.

7. Therefore, it can safely be held on the findings as above, no case of deficiency in patient care service against the clinical establishment can be said to have been made out and whether, a case of medical negligence by a medical professional or a case of error in judgment is made out, is a matter to be considered by the State Medical Council and not by this Commission.

8. It be noted the First proviso to sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017, has expressly, ousted the jurisdiction of the Commission to give any findings in regard to the question of medical negligence by a medical professional.

9. The only other two questions remain for consideration, are the billing issues and the levying of CSR (Corporate Social Responsibility) on the patient.

10. On careful perusal of the bills and comparing the same with the other materials on record, we do not find any billing deviating from their declared fees and charges. At this stage, it be noted, that the patient was admitted in the hospital for undergoing a particular surgical operation and prior to her admission an estimate of Rs. 173000/- was given by the hospital authority for the same. However, during the first operation, some complications arose and as a result she was to put on ventilator and her stay in the hospital was prolonged and that enhanced the estimated cost to Rs.3290854/-. Out of which an amount of Rs.12,00,000/- was realized by the Clinical Establishment from the Insurance Company and Rs.40,000/- in cash from the complainant and a sum of Rs.2050854/- remained outstanding.

It be added, the Commission has received a mail from Dr. Arafat Faisal, Head Medical Service, Fortis Hospital, the Clinical Establishment, conveying that on humanitarian ground they never insisted the complainant to liquidate the outstanding and confirming and undertaking that they would not pursue the patient party for payment of such outstanding amount in future.

11. The only other point left for consideration is whether a patient can be charged on account of CSR (Corporate Social Responsibility). In this case, we find a sum of Rs.100/- was billed and charged against the complainant on account of CSR. This is not only grossly unethical but patently illegal. It is needless to mention that the Corporate Social Responsibility, is an obligation on the part of a corporate/company to spend a part of its profit for the benefit of the society and no question arises to get the same recovered from a service recipient. We, therefore, of the opinion this matter at once be brought to the notice of the Registrar of Companies, West Bengal for appropriate penal action.


12. Having regards to the above, the views of two members, having medical expertise, (the majority views) that no case of deficiency in patient care service against the Clinical Establishment has been made out and if there is any deficiency in the patient care service that tends to make out a case of medical negligence, which is adjudicable by the State Medical Council, is accepted.

Since, the Clinical Establishment in writing through Dr. Arafat Faisal, Head Medical Service, Fortis Hospital has communicated to the Commission that it has forgone the outstanding amount of Rs2050854/- which was purportedly due from the complainant on account of treatment of his wife and confirmed that they will never pursue for recovery of the same, this case stands closed with the above observation and accordingly disposed off.

Minority View

Sd-

Dr. G. K. Dhali, Member

Authenticated

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

Majority View

Justice Ashim Kumar Roy, Chairperson

Sd/-

Dr. Sukumar Mukherjee, Member

Sd/-

Dr Pradip Kr Mitra, Member

Sd/-

Dr Makhan Lal Saha, Member

Sd/-

Dr Madhusudan Banerjee, Member