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Case Reference: ID-KOL/2018/000420

Present: Justice Ashim Kumar Banerjee (Retired), Chairman

Smt. Sanghamitra Ghosh, IAS, Vice -Chairman

Dr. Sukumar Mukherjee,

Dr. Makhanlal Saha,

Dr. Madhusudan Banerjee,

Dr. Maitrayee Banerjee and

Dr. Pradip Kumar Mitra.

Dr. Suman Mandal.....Complainant  
- Versus-  
K.F. Medical Centre Pvt. Ltd.....Respondent

Heard on: February 14, 2019 and March 19, 2019.

Judgment on: *May 16* , 2019

**PER ASHIM KUMAR BANERJEE:-**

**FACTS:-**

The dispute would relate to medical negligence of K.F. Medical Centre Private Ltd. while treating Mrs. Puja Chatterjee on March 19, 2018 to March

21, 2018 when she was admitted in the said Nursing home under the care of Dr. Dilip Saha the respondent no.2 while she was scheduled for delivery of her child.

The facts would reveal, Mrs. Chatterjee was a housewife. Her husband Dr. Suman Mondal was also a medical practitioner as Paediatrician, working in ESI Hospital, Calcutta. The couple was consulting Dr. Saha during the period of gestation. When Mrs. Chatterjee was having pain on March 19, 2018 she immediately contacted Dr. Saha who advised her to get her admitted in K.F, Medical Centre Private Ltd. Since, Dr. Mondal was on duty Mrs. Chatterjee visited the clinical establishment alone and got herself admitted.

As per the complaint, the couple was in touch with Dr. Saha who was constantly asking them to wait and watch despite being informed, she was in acute pain of labour. Ultimately, Mrs. Chatterjee gave birth to a male child at 8:00 a.m. on March 20, 2018. The delivery was conducted by the director of the said medical centre, Dr. Nistar as Dr. Saha failed to attend. After the delivery was conducted there was some problem with the new born and on the advice of the Paediatrician, Dr. Mukherjee present at the time of delivery, new born was shifted to another hospital by Dr. Mandal who attended the

Clinical Establishment after receiving the information of delivery conducted by Dr. Nistar.

The complaint would mainly relate to the negligence of Dr. Saha because of his prolonged absence during the period of delivery. It is unfortunate, despite not being present at the relevant time, Dr. Saha claimed his fees that Dr. Mandal had paid to the clinical establishment. The complainant would accuse the clinical establishment mainly because of absolute careless attitude shown by the nursing staff at the time of delivery. It was alleged, she was not even provided with the sterile pad although her wearing apparel was completely wet.

#### **PECUNIARY ASPECT:-**

From the records, it appears, hospital Authority billed a sum of Rs.36,870/- out of which nursing home Authority charged Rs.5,870/- as nursing home expenses, Rs. 30,000/- for Dr. Saha and Rs.1,000/- for the Paediatrician. It further appears, Paediatrician did not accept his fees and waived it, so was Dr. Nistar who was offered a sum of Rs.10,000/- by Dr. Saha. In effect, the Dr. Mandal had to pay Rs.25,870/- out of which Dr. Saha was paid Rs. 20,000/- and the balance amount Rs.5,870/- was adjusted by the nursing home as their charges.

**COMPLAINT:-**

As observed earlier, the main crux of the complaint would indicate medical negligence of Dr. Saha. Dr. Mandal lodged the former complaint that the Commission received on July 4, 2018 and registered as complaint No.420 of 2018. The complaint would also enclose relevant medical papers pertaining to delivery of the male child by Mrs. Puja Chatterjee. The Commission asked for response from the clinical establishment as well as Dr. Saha. Dr. Saha, by his letter dated 14.02.2019, would take a plea of illness and in support of such illness he produced photocopies of medical papers that would relate to a period much after the incident.

The medical centre offered explanation through Dr. Nistar who was the Director. According to him, the patient was admitted under care of Dr. Saha. As Dr. Saha was not attending Dr. Nistar examined the patient at 12:00 in the midnight. The other medical staff also attended at 3:00 a.m. and 5:00 a.m. on the next day. Dr. Nistar again visited the nursing home at 06:30 a.m. and ultimately under his care Mr. Chatterjee gave birth to the baby male child weighing 2.250 kg. Dr. S. Mukherjee was also present. The delivery was uneventful. The new born was transferred to NICU in another hospital at the choice of Dr. Mandal, the father of the child. Dr. Mandal paid fees as indicated above.

We initially heard the parties on February 14, 2019 when after being prima facie satisfied about the complaint we asked parties to file affidavit. We finally heard the matter on March 19, 2019 after filing of affidavits when we reserved our judgment.

### **RIVAL CONTENTIONS:-**

Dr. Mandal reiterated his complaint. In addition, he also charged the establishment for not having any infrastructure for treating new born, compelling him to shift the child to another hospital. Dr. Nistar, however, contradicted such allegation by asserting, the establishment had proper infrastructure and as per the choice of Dr. Mandal new born was shifted to Medica Superspeciality Hospital where the boy was treated.

Dr. Saha stuck to his consistent stand of illness; however that did not create any impression on the Members present including myself.

Appearing for the establishment, Dr. Nistar could not offer a plausible explanation as to the definite allegation of not providing the sterile pad. On the issue of billing, Dr. Nistar was consistent in saying, he did not charge any fee as doctor while conducting the delivery. Dr. Saha, however, offered him Rs. 10,000/- that he returned to Dr. Mandal as according to him, ethically, he

should not charge Dr. Mandal being in the same profession. The Paediatrician Dr. Mukherjee also did not accept any remuneration and waived the same.

### **EXPERT OPINION:-**

Amongst the Members present the Medical Expert Dr. Madhusudan Banerjee submitted his written opinion on the issue that is quoted below:-

*"This is a case of 'pre term labour' at 32 weeks in Mrs. Puja Chatterjee a Primigravida (first pregnancy)*

*The allegation against establishment deals with unsympathetic, non- supportive attitude by nursing staff to Mrs. Chatterjee who was suffering from excessive labour pain.*

*Only thing was done to the patient was administration of injection of analgesic which did not relieve her pain or distress effectively. Nursing staff has not even applied a sterile sanitary pad to the patient after rupture of the membranes and leakage of water,*

*The allegation was mostly against Dr. Dilip Saha the Obstetrician concerned. Dr. Dilip Saha advised her admission in the nursing home over phone when she informed him of some uneasiness she felt and of the less movement of the baby inside.*

*Dr. Saha did not attend her since admission at around 9:00 p.m. on 19.03.2018 till the delivery of the baby at around 8 a.m. in the following morning of 20.03.18.*

*Dr. A. Nistar, Director of the clinical establishment, K.F. Medical Centre Pvt. Ltd., who is a specialist Obstetrician, conducted the delivery with the aid of Episiotomy, a surgical incision made at the vaginal outlet.*

*Dr. Dilip Saha came later and repaired the Episiotomy wound which was an eye-wash as this could have been done as well by Dr. A. Nistar who conducted the delivery.*

*Dr. Dilip Saha is guilty of professional negligence in duty and in responsibility. The clinical establishment did not provide proper service to a mother in labour."*

#### **MY VIEW:-**

The provisions of **The West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017** would normally permit the Commission to look into and decide on the complaint of medical negligence and / or issues relating to and as against the clinical establishment and / or the staff engaged by them. Medical negligence by medical practitioner would, however, not come within the domain of **the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017**. Hence we are not competent to look into and decide on the complaint that would

relate to Dr. Saha and we permit Dr. Mandal to raise such issue before the proper forum, if so advised.

We would thus proceed only to decide of the complaint as against the clinical establishment KF Medical Centre Private Ltd. While we fully appreciate the agony of the complainant and his grievance on the issue, on careful examination, we do not find any fault on the part of clinical establishment save and except the negligence of the nursing staff for not providing the sterile pad as referred to above. The Nursing Home Authority has a duty towards the patient under their care supposed to be looked after by them. They, in our view, cannot avoid their responsibility. We express our strong displeasure on this issue. We hold, the clinical establishment was guilty of medical negligence by not providing sterile pad to the patient at the need of the hour.

**CONCLUSION:-**

Dr. Mandal, in his complaint prayed for monetary compensation, however, in his affidavit filed subsequently, he changed his stand as under:-

*"I do not want any punishment or monetary compensation from KF or Dr. D. Saha. But based on the incident happened to my wife and son as a Doctor / Husband / Father I expect a message from your judgment which will decide how the high risk pregnancy in future be conducted at KF Nursing Home."*

In view of the modified submission of the complaint, we do not award any compensation in favour of the complainant. We direct the clinical establishment to pay a fine of Rs.10,000/- to Ramakrishna Mission Seva Pratisthan, Sarat Bose Road, Calcutta and submit receipt with the Commission ensuring compliance.

Sd/-

**(ASHIM KUMAR BANERJEE)**

We agree,

Sd/-

**Smt. Sanghamitra Ghosh, IAS, Vice –Chairman**

Sd/-

**Dr. Sukumar Mukherjee,**

Sd/-

**Dr. Makhanlal Saha,**

Sd/-

**Dr. Madhusudan Banerjee,**

Sd/-

**Dr. Maitrayee Banerjee**

Sd/-

**Dr. Pradip Kumar Mitra.**



**ARSHAD HASAN WARSI**  
WBCS (Ex)

Secretary  
West Bengal Clinical Establishment  
Regulatory Commission  
&  
Joint Secretary  
Health & F.W. Department