

Office of the West Bengal Clinical Establishment Regulatory Commission

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Case Reference: BAN/2018/000313

Sekh Milan..... Complainant

vs

AMRI Hospitals Limited..... Respondent/ Respondents

ORDER SHEET

| Office Note | Order No. | Date | Order |
|-------------|-----------|------------|---|
| | 1. | 19/06/2019 | <p>This is a case of an unfortunate death of a young lady at the time of his second caesarean section. At the time of caesarean section, there was massive bleeding due to severe shock that the treating doctor could not control even after doing hysterectomy. As a result, the patient died. Hence this complaint before us.</p> <p>The husband of the deceased, would submit before us, he went to Dr. Biplab Deb and was on consultation during pregnancy. As per his advice he got his wife admitted in AMRI, Salt Lake, where the surgery was done. He, however, could not raise any specific allegation as against the clinical establishment that would be within our domain. He has already made a complaint in Medical Council against Dr. Deb that is awaiting adjudication. In our view, once the complaint against the treating doctor is pending for adjudication and specially when there is no specific allegation against the clinical establishment, the petitioner should ventilate his grievance before the Medical Council.</p> <p>The petitioner is assisted by the Ld. Advocate, Mr. Arup Kr. Mondal. Mr. Mondal draws attention of section 33 of the West Bengal Clinical Establishment and Registration Act, 2017. The provision is quoted below :</p> <p><i>"33. (1) Without prejudice to the other provisions of this Chapter, if any clinical establishment whether by itself or by any other person on it's behalf, while providing services causes injury to the service recipient or his death, due to</i></p> |

negligence or any deficiency in providing service, it shall be lawful for the Commission, on substantiation of charges, to direct it to pay compensation to the victim or the legal representative of the victim, a sum—

(a) which may extend to three lakh rupees in case of simple injury;

(b) which may extend to five lakh rupees in case of grievous injury; and

(c) which shall not be less than ten lakh rupees in case of death:

Provided that the compensation shall be paid at the earliest and in no case later than six months from the date of occurrence of the incident:

Provided further that in case of death, an interim relief shall be paid to the next of the kin within thirty days of the incident.

(2) Where any person is held guilty of a contravention leading to grievous injury or death, the Commission may cause the name and place of residence of the person held guilty, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Commission may direct and the expenses of such publication shall constitute the cost and the same shall be recoverable in the same manner as fine.

(3) The Commission may also order for cancellation of license, closure of the clinical establishment, forfeiture of establishment and property in case of grievous injury or death of the service recipient."

Relying on the said provision, Mr. Mondal would contend, once the establishment engaged Dr. Deb who was responsible for the death of the patient the hospital would have vicarious liability that they could not avoid.

With due respect, we wish to differ.

We have heard the petitioner as well as the treating Doctor. It was a case of medical negligence that would be within the complete domain of the Medical Council. Unless and until such complaint is disposed of and there is specific allegation as against the establishment there would be hardly any scope for us to interfere.

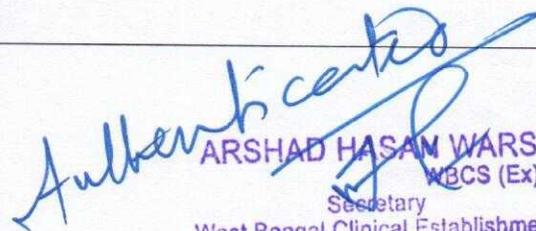
The complaint is thus disposed with the above observations. The petitioner would be at liberty to approach us again if occasion so arises.

Sd/-

Hon'ble Chairperson

Sd/-

Dr. Sukumar Mukherjee, Member


ARSHAD HASAN WARSI
WBCS (Ex)
Secretary
West Bengal Clinical Establishment
Regulatory Commission
&
Joint Secretary
Health & F.W. Department

Sd/-

Dr. Madhusudan Banerjee, Member

Authenticated
[Signature]

ARSHAD HASAN WARSI
WBCS (Ex)
Secretary
West Bengal Chartered Accountants
Regulatory Commission
Joint Secretary
Health & Family Welfare Department