

Office of the West Bengal Clinical Establishment Regulatory Commission

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Case Reference: HOW/2018/000445

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,

Dr. Pradip Kumar Mitra and

Smt. Madhabi Das.

Siddhartha Hajra.....Complainant

- Versus-

Narayana Superspeciality Hospital, Howrah

...Respondent

Heard on: February 15, 2019 and April 16, 2019.

Judgment on: *June 11* , 2019

Per ASHIM KUMAR BANERJEE:-

FACTS:-

Satadru Hajra, young man of 26 years was admitted in Narayana Superspeciality Hospital through its emergency on January 20, 2018 at about 11:30 PM. Mr. Hajra was having gastric pain, coupled with vomiting, fever and Jaundice since January 19, 2018. He was admitted under Gastroenterologist Dr. Sanjoy Basu and Dr. Gaurav Kumar, General Surgeon. It is not clear why Dr. Gaurav Kumar was involved as the patient was not required any surgical intervention. He was admitted in ICU. According to the doctor, the liver function was grossly deranged with Bilirubin 4.89mg percent. The petitioner would contend, although the patient was admitted under Gastroenterologist Dr. Sanjoy Basu, the patient was mainly treated by Dr. Gaurav Kumar, General Surgeon. He was under constant treatment of Dr. Kumar from the date of admission till January 24, 2018 when he was shifted to another hospital. The condition of patient deteriorated day by day. The petitioner was not satisfied with the treatment and ultimately they shifted the patient on January 24, 2018 and got him admitted in Woodland Nursing Home where the patient died on January 29, 2018 with acute hepatic failure and encephalopathy. After the death of the patient, Siddhartha Hajra, the father of the patient made this complaint as against the doctors, Dr. Sanjoy Basu and Dr. Gourav Kumar as well as the Medical Establishment. The complaint would reveal, Dr. Sanjoy Basu was

not available at the time of admission as well as on the next day. The patient was mostly looked after by Dr. Gourav Kumar who was a General Surgeon. Time to time report pertaining to condition of the patient was not communicated to the patient party. The paramedical staff were also not serious in extending the support to the patient. The patient was suffering from acute fulminant Hepatitis. He was given spicy egg curry meal while he was in ICU as shown in photograph provided. The complaint would indicate the following infirmities that are quoted below:-

- *"The 1st negligence was that the patient was kept unattended for 2 days by the consulting doctor (Dr. Sanjoy Basu).*
- *Secondly the patient was given paracetamol (dolo 650mg) which was advised to (be) stopped by the consulting doctor on 23rd night (HIGHLIGHTED IN ICU REPORT)*
- *We have surveyed and reviewed over internet and found that paracetamol use is strictly prohibited for a jauandice patient as it may lead to acute liver failure (INTERNET JOURNASL ATTACHED)*
- *Thirdly my son was kept from morning till evening without any specific treatment on the day of shifting (24th January, 2018) due ridiculous paper work, which if shifted a little earlier, may be my son could be saved.*
- *The assistant doctor noted on 23rd January, 2018 night that the patient was not well and relatives to be informed but due*

to their utter ignorance they failed to inform us. Details on ICU Pg 8.

- We have surveyed the fact that "HEP A" related Acute Liver Failure is very rare and chances are 1 in a lakh. We are very sorry to inform that how come within a span of 3 days, 2 cases of same category have taken place in the same hospital with identical negligence's and medication. If required you can take reference from the patient party details attached."*

PECUNIARY ASPECT:-

On close examination of the complaint we do not find any billing dispute. At the hearing the petitioner did not raise such issue. Hence, we do not wish to deliberate on this aspect

COMPLAINT:-

As observed earlier, the father of the deceased filed a formal complaint with the Commission on July 28, 2018 that we have highlighted herein before.

We heard the parties at length on February 15, 2019 when upon being prima facie satisfied about the veracity of the complaint we directed the parties to exchange affidavits. We heard the matter again on April 16, 2019 upon completion of affidavits.

RIVAL CONTENTIONS:-

Mr. Siddhartha Hajra, the petitioner made submission in support of the complaint. The petitioner would contend, they did not know either Dr. Sanjoy Basu or Dr. Gourav Kumar before. They went to the Clinical Establishment for treatment of the patient as per the advice of the Clinical Establishment. He was admitted under Dr. Sanjoy Basu and Dr. Gaurav Kumar. On January 20 and 21, 2018 he was examined by Dr. Kumar. On January 22, 2018 the petitioners tried to contact Dr. Basu. They came to know, Dr. Basu was not even aware of the patient's admission under him. However, he came and examined the patient and observed, the patient was fine and soon he would be transferred from ICU. When the petitioner visited the patient during visiting hours the patient was fine. However, he was surprised to notice, the patient was given spicy diet that too, at 04:00P.M. He immediately made a complaint to Dr. Kumar. On January 23, 2018 the petitioner saw the patient during visiting hours when he was still in ICU. However, the patient was fine. On a query made by him, he came to know, due to non-availability of bed in HDU the patient could not be transferred. However, at about 09:20 P.M. he received SMS for his transfer from ICU to HDU. On the next day i.e. on January 24, 2018 at 11:00 a.m. he was informed that the condition of the patient had deteriorated in the late night of January 23, 2018, however, no such information was communicated to them earlier. The patient was suspected to have acute liver failure. On the suggestion of Resident Medical Officer the

patient was transferred to Woodland Nursing Home at about 12:00 P.M. He was then unconscious. During his transfer he was not even given any Oxygen mask by the hospital as it was not available. Trauma Care Ambulance came at around 06:00 P.M. The patient died on January 29, 2018 at about 06:50 A.M. at Woodland Nursing Home, Calcutta. The petitioner would complain, there was total lack of communication by the Clinical Establishment. The Clinical Establishment did not even inform the doctor in time under whose care he was supposed to have been admitted. He was being treated by Dr. Gaurav Kumar who was a General Surgeon and did not have the expertise to deal with the critical situation that the patient faced. The Para- medical staffs were not at all serious in extending medical support to the patient. The spicy egg curry meal was served when the patient was in ICU and that too, at about 04:00 P.M. At the time of shifting, the hospital could not arrange any oxygen mask or oxygen support and the patient had to wait until the Trauma Care Ambulance came with adequate infrastructure including oxygen facility during transfer. The treatment, that was extended by Dr. Kumar, was not apt.

Confronting the claim of the petitioner, the Hospital Authority was of the view, they did everything that was required. There was no dereliction in duty that would be apparent from the bed head tickets and other concerned medical records produced before the Commission. According to them, the death was unfortunate; however, there was no laxity on the part of the

Hospital Authority. The condition of the patient was such, despite all efforts, the patient did not respond to the treatment.

EXPERT OPINION:-

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

Clinical history, progression and care

Mr. Satadru Hajra 26 years male patient reported in Emergency Department of Narayana Superspeciality Hospital on 20th January, 2018 at about 11:30 P.M. with epigastric pain, episodes of vomiting, fever and jaundice since 19th January 2018. He was admitted under Gastroenterologist Dr. Sanjoy Basu MBBS, MRCP (Lond & Edin) and General Surgeon Dr. Gaurav Kumar MBBS, DNB at ICU. The admission diagnosis was Viral Hepatitis. The liver function was grossly deranged with Bilirubin 4.89 mg%, SGOT 2662, SGPT 2672, Prothrombin time 23.80 and INR 2.12. He had only drug history of 4 dose of Cefixime prior to admission. The progress of disease since admission was very rapid as shown below as per bed head ticket (Page 6).

	<u>19.01.2018</u>	<u>21.01.2018</u>	<u>23.01.2018</u>
Total Bilirubin	4.89	13.40	25.30
Direct Bilirubin	1.82	8.80	19.78
SGOT	2672	3468	2337
SGPT	2662	4490	3741
INR	2.12	2.3	2.19

On 21.01.2018

USG Report – Borderline hepatomegaly with prominent IHBR

Irregularly thickened GB

Enlarged Right Kidney

The patient was examined by Gastroenterologist Dr. S. Basu and General Surgeon Dr. Gaurav Kumar on 21.01.2018, 22.01,2018, 23.01.2018 and 24.01.2018. The viral markers are sent on 22.01.2018 and 23.01.2018 and Leptotospiriosis Antibody was sent on 23.01.2018. As per DORB (P-4) viral profile Hepatitis A and E are awaiting. There is no mention about Hepatitis B infection. It was felt the patient had hepatic encephalopathy Grade III with deranged INR due to acute liver failure GCS – E2 M5 V3. Patient's relatives are explained about the critical condition of the patient. The role of

been discussed with family members. Incidentally in the treatment sheet of BHT the patient has been prescribed Azithral, Paracetamol SOS if temperature is high and Inj. Pethidine IM SOS for epigastric pain on 21.01.2018 & 23.01.2018. However, he has also received Zofer, Duphalac, PAN, Vitamin, Hepamerz, Rifagut and Lactulose enema on different dates subsequently. The patient became drowsy within 4-5 days since admission.

The patient took discharge against medical advice on 24.01.2018 and got admitted in Woodlands Nursing Home. The patient ultimately died on 29.01.2018 with acute hepatic failure with encephalopathy. The liver transplant was not available.

Comments:

1. The clinical history and progress in hospital are strongly suggestive of acute fulminant hepatitis characterized by rapid deterioration of liver function with coagulopathy in 3-4 days with marginal hepatomegaly and progressive drowsiness in a young man of 26 years. (Ref.Harrison's Text Book of Medicine 19 Edition)
2. There was no antecedent history of alcohol consumption or any substance abuse.
3. Acute fulminant hepatitis is usually caused by Hepatitis B, Hepatitis E rather than Hepatitis A (Ref.Harrison's Text Book of Medicine 19 Ed.).

4. The acute fulminant hepatitis has mortality of 80% without transplantation as per literature.

5. Entries of Azithal, Paracetamol in the treatment of the patient in BHT are not the standard of care. Furthermore pethidine for pain relief SOS is detrimental.

6. Role of Dr. Gaurav Kumar Surgeon is not meaningful and rather it adds up to the cost of professional visit unnecessarily.

7. The demonstration of food plate in the photograph in ICU by the bed side of patient has not been disproved. The nursing care should be responsible for this."

MY VIEW:-

Looking to the provisions of **The West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017**, facts as discussed above, normally there would be no scope for examining in detail the nature of the treatment. However, looking to the peculiar facts and circumstances involved herein, we would fail in our duty to be a mere oblivion rejecting the complaint taking the plea of **The West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017**.

The patient party approached the Super-speciality Hospital expecting adequate treatment and that too, by an expert on the issue. The hospital

admitted him under Dr. Sanjoy Basu who was not aware of his admission until the patient party contacted him and that too, after two days i.e. January 22, 2018. If Dr. Basu was not available from January 20, 2018 the Hospital Authority could have engaged any other Gastroenterologist from the panel of consultants or informed the patient party expressing their inability to treat him in absence of Dr. Basu. Dr. Kumar was a General Surgeon, he did not have the expertise to treat this patient with acute hepatic failure.

Extending treatment is the duty of the Clinical Establishment, however, it is not enough. They must, time to time, inform the patient party about the development as well as the treatment that they have been extending to the patient. From the records, it appears, there was lack of communication. The definite allegation of the mis-communication could not be successfully rebutted by the Establishment. We are surprised to note, how a patient of Hepatitis who was admitted in ICU could be offered a spicy egg curry meal by the Hospital Authority. The Hospital Authority disclosed the diet chart where we would find the patient was prescribed egg curry as appears from page 35 of the affidavit filed by the Clinical Establishment. The diet as prescribed is quoted below:-

“Alu+ B Veg+ Renal Egg white Jhol/ CK stew.....BT”

If we look to the report of the medical expert we would find that the

Mukherjee. Moreover, according to Dr. Mukherjee, the role of Dr. Kumar was not meaningful rather, it added to the cost of professional visit unnecessarily.

Taking a sum total of the situation, I would feel, the Medical Establishment cannot shirk their responsibility. It is true, according to Dr. Mukherjee, the nature of illness would suggest 80 per cent mortality, however, at the end of the day we must be satisfied, the Clinical Establishment had done whatever possible and whatever required for cure of the patient. I am sorry to say, Clinical Establishment could not successfully demonstrate from the records, they did their best.

In my view, the Clinical Establishment was guilty of medical negligence for the reasons as discussed above.

CONCLUSION:-

The petitioner lost his son at the age of 26 years. We are not sure, whether, despite all medical care, he could survive or not. He was entitled to the best of the treatment that the Establishment utterly failed to give. As per the provision of the **West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017** in case of death due to medical negligence, the Clinical Establishment must be penalized and the petitioner must be compensated for a sum not less than Rs.10lacs. Considering peculiarity of the case and the medical history we cannot come to such a definite

conclusion that the negligence led to the death of the patient. We thus award compensation of Rupees four lacs that the Clinical Establishment must pay to the petitioner within a period of four weeks from the date of communication of this order and file report of compliance.

We grant liberty to the petitioner to approach the Medical Council as against the treating doctors, if he so likes.

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.

Authenticated
W.B.
ARSHAD HASAN WARSI
Secretary
West Bengal Clinical Establishment
&
Regulatory Commission
Joint Secretary
Health & F.W. Department