

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2014 OF 2015

(Against the Order dated 27/03/2015 in Appeal No. 792/2013 of the State Commission West Bengal)

1. NANDINI BANDYOPADHYAY
FLAT NO. D-3, 66/3/1, COLLEGE
ROAD, HOWRAH-711103
WEST BENGAL

.....Petitioner(s)

Versus

1. BELLE-VUE CLINIC & ANR.
9, LOWDON STREET, P.S. SHAKESPEARE SARANI
KOLKATA-700017
WEST BENGAL

2. DR. SUBRATAMAITRA
FD/22, SECTOR-3 SALT LAKE CITY,
KOLKATA-700106
WEST BENGAL

.....Respondent(s)

BEFORE:

**HON'BLE MR. ANUP K THAKUR, PRESIDING MEMBER
HON'BLE DR. S.M. KANTIKAR, MEMBER**

For the Petitioner :

For the Respondent :

Dated : 05 Mar 2021

ORDER

(APPEARED AT THE TIME OF ARGUMENTS)

For Petitioner : Mr. Jai Dehadrai, Advocate
Mr. Sidharth Arora, Advocate
Mr. Harshit Goel, Advocate

Mr. Vikas Nautiyal, Advocate

For Respondent No. 1 : (later on appeared on the date of arguments)

For Respondent No. 2 : Deleted

PRONOUNCED ON: 5th March 2021

ORDER

PER DR. S. M. KANTIKAR, MEMBER

1. The Complainant Nandini Bandyopadhyay took her father Mr. P. K. Mukherjee (since deceased, hereinafter referred to as the 'patient') to Belle-Vue Clinic (hereinafter referred to as the Opposite Party No. 1) on 02.06.2007 and admitted for weakness and pain in the left groin. On the next day, the Ultrasonography (USG) and few blood tests were done and it was a suspected case of cancer in liver and lungs. On 04.06.2007, CT guided FNAC was performed. It was very painful and the patient suffered suffocating experience. On 05.06.2007, bedsore was noted on the back. On 06.06.2007 the patient did not pass urine for long time and the doctor inserted a catheter in the bladder. It was alleged that spread of lung cancer takes time to reach liver and it spreads locally in the chest. It was alleged that the patient was 84 years old with chronic medical ailments. Dr. Subrata Maitra (hereinafter referred to as the Opposite Party No. 2) failed to co-relate the raised blood levels of fibrinogen, D-dimer and PSA, which would have been helpful for proper management with the help of Oncologist, Hematologist and Urologist. The treating doctor failed to exercise reasonable degree of care to diagnose and control the urinary infection which was present at the time of admission at Belle-Vue Clinic (the Opposite Party No. 1). The patient developed uro-sepsis and died on 06.06.2007. Being aggrieved, the Complainant filed a complaint before the District Forum, Unit-I, Kolkata.

2. The Opposite Parties filed their respective written versions and denied the entire allegations.

3. The District Forum dismissed the complaint and the State Commission also upheld the decision of the District Forum by dismissing the appeal (First Appeal No. 792 of 2013) filed by the complainant.

4. Being aggrieved, the complainant filed the instant Revision Petition.

5. We have heard the learned counsel for both the sides. The learned counsel for complainant submitted that fora below failed to consider the dereliction of duty by the Opposite Parties, which precipitated the sepsis leading to death of the 84 years old patient within six days of his admission. The Opposite Party No. 2 at the earlier stage did not examine or investigated the patient for simple tests like a plain Chest X-ray, USG abdomen and a few blood tests. The lung Cancer normally spreads locally and after duration to other parts and the liver. Both the learned

fora below have failed to appreciate that the opposite parties failed to act as per the medical protocol, which amounts to definite dereliction of duty causing death of the patient due to sepsis within six days of admission.

6. The learned counsel for the Opposite Parties argued that the medical record shows that the patient was admitted with severe weakness, general debility and malnutrition. There was low hemoglobin and low albumin level in the blood. Due to prolonged poor nourishment, the patient was immobile. The nursing note revealed the peeling of superficial skin over the back. The patient was suffering from comorbidities like Hypertension and Prostrate problem. He was on medication. The USG of liver showed evidence of space occupying lesion (SOL) and clinically it was diagnosed as disseminated malignancy (Stage IV cancer) having poor prognosis. On 05.06.2007, by FNAC of liver, the diagnosis was confirmed as metastatic adenocarcinoma. The X-ray chest and blood tumour makers (CEA, PSA), raised CRP, D-dimer and fibrinogen were suggestive of primary cancer of colon or lung. However, for final diagnosis histological study was needed. The Opposite Party No. 2 referred the patient to renowned Oncologist Prof. Anup Majumder, Head of Department of Oncology and Radiotherapy Unit at SSKM Hospital. After examination, he also opined it as “malignancy – primary ? GI? Lung” and same was explained to the patient’s wife Mrs. Banerjee also told about the limited therapeutic options because of poor condition of the patient.

7. We have perused the entire medical record and given our thoughtful consideration to the arguments from both the sides.

8. We note from the medical record that on 8th June 2007, at about 9.30am, Dr. Chanchal Goswami, the Cancer Specialist, with the Opposite Party No. 2, examined the patient. It was diagnosed as lung cancer with liver metastasis and urinary sepsis. Because of poor prognosis there was no scope of chemotherapy or radiotherapy. Therefore, he suggested supportive care and suggested to try with an oral drug called Gefitinib, if the infection was controlled. It is pertinent to note that on 08.06.2007 from 10 a.m. the patient’s condition started deteriorating very fast in spite of the patient being under cover of two antibiotics. The patient developed cardiac arrest in the presence of Opposite Party No. 2 and two other doctors Dr. Anirban Neogi and Dr. Mandal. All resuscitative measures were taken but the patient passed away at 10.35 a.m.

9. We note that the complainant filed the instant complaint based on the report of the expert Dr. Ajay Kumar Gupta, the ex-Professor of Forensic Medicine at Govt. Medical College. However, Dr. Gupta was neither a subject expert nor qualified in Oncology and Urology. Under Section 45 of Evidence Act, he cannot be construed as an expert. The medical record (BHT) clearly revealed us that the patient, being 84 years old, was admitted with bed sore on his back and diagnosed as Metastatic cancer. The Opposite Party No. 2 investigated the patient and was kept him under treatment of the team of doctors including two Oncologists. The patient already had prostatic problem and urinary infection also. On 06.02.2007, the patient suffered urinary retention at 3 p.m., the Catheterization was done at 10.30 p.m. with 14 (F) Folley’s Catheter to release the retention of urine. It cannot be construed as negligence. In the instant case, uro-sepsis was because of patient’s prostatic problem and urine culture was also advised. Higher antibiotics injections of Amikacin and Ciphram were administered. On 08.06.2007 at 10.35 a.m., the condition of the patient suddenly deteriorated with gasping breathing and he became unresponsive. Immediately, the resuscitative steps (CPR) were taken but the patient could not be saved.

10. As a common practice the Oncologists initially assess the stage of disease and the condition of the patient. In the instant case, the patient's hematological values D-Dimer, plasma fibrinogen and FDP were marginally increased. Such changes are usually seen in the advanced liver cancer, which can be treated without the help of Hematologist. The patient was suffering from chronic comorbidities like – Hypertension and Prostatic hyperplasia. Therefore the active management of cancer was not advised and life expectancy despite the treatment was drastically restricted. Such patients with general debility are prone for urinary complications. In our considered view, the death of the patient was due to advanced cancer with lung and liver metastasis; it was neither due to negligence nor deficiency in service during the treatment from the Opposite Parties. It should be borne in mind that “ *No cure is not negligence of doctors*” .

11. The Hon'ble Supreme Court in **Jacob Mathew's case** , (2005) SSC (Cr1) 1369, observed as below:

“When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it . However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.”

In the instant case, as discussed in the preceding paragraphs, the condition of the patient did not improve despite proper treatment. It resulted into the death of the patient. Therefore, just because a person suffers from a bad outcome of medical treatment, does not accrue an automatic right to sue the hospital or doctor for compensation. We do not find any medical error to be considered as negligent in the instant case. It was the reasonable care exercised by the Opposite Parties.

12. Based on the foregoing discussion, we do not find any error apparent in the findings of both the fora below, which need any interference.

Resultantly, the Revision Petition is dismissed.

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ANUP K THAKUR
PRESIDING MEMBER

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DR. S.M. KANTIKAR
MEMBER