

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 629 OF 2020

(Against the Order dated 13/02/2020 in Appeal No. 1313/2017 of the State Commission West Bengal)

1. SIDDHARTHA S. MOOKERJEE & ANR.

S/O. SHRI SANJAY MOOKERJEE, R/O. 20/1/2,
BALLYGUNGE PLACE, PS GARIAHAT,
KOLKATA-700019

WEST BENGAL

2. DR. NILANJAN INDU

S/O. SHRI SANTOSH KUMAR INDU, R/O. 86, MADARIPUR
PALLY, PS KHARDAHA,
DISTRICT-NORTH 24 PARAGANAS KOLKATA-700118

WEST BENGAL

.....Petitioner(s)

Versus

1. MADHAB CHAND MITTER & ANR.

S/O. LATE NEMAI CHAND MITTER, MONIDHAM, P-4,
MOTIJHEEL AVENUE, PS-DUMDUM
KOLKATA-700074

WEST BENGAL

2. M/S. APOLLO GLENEAGLES HOSPITAL LTD.

58, CANAL CIRCULAR ROAD, PS PHOOLGAGAN,
KOLKATA-700074

WEST BENGAL

.....Respondent(s)

REVISION PETITION NO. 645 OF 2020

(Against the Order dated 13/02/2020 in Appeal No. 1313/2017 of the State Commission West Bengal)

1. APOLLO GLENEAGLES HOSPITAL LIMITED

.....Petitioner(s)

Versus

1. MADHAB CHAND MITTER & ORS.

.....Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

HON'BLE MR. BINOY KUMAR, MEMBER

For the Petitioner :

Appeared at the time of arguments

For the Petitioner : Mr. Siddhartha Chowdhury, Advocate

For the Respondent : Mr. Sujoy Chatterjee, Advocate
for Madhab Chand Mitter(R-1)

For Apollo Gleneagles Hospital: Mr. Prabir Basu, Advocate

Mr. Sanjoy Kumar Ghosh, Advocate

Ms. Rupali S. Ghosh, Advocate

For the Respondent :

Dated : 26 Aug 2022

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. These Revision Petitions have been filed against the Order dated 13.02.2020 of the West Bengal State Consumer Disputes Redressal Commission (hereinafter referred to as the “State Commission”) in First Appeal No. A/1313/2017, held the Petitioners negligent while treating the wife of the Complainant/Respondent No.1 (hereinafter referred to as “the patient”).

2. Brief facts are that Mrs. Susmita Mitter (hereinafter referred as ‘patient’) was under chemotherapy treatment of metastatic ovarian cancer. She was critical, in terminal stage and on ventilatory support. It was alleged that on 30/07/2014 night due to negligence and some technical lapses from the doctors in ICU, it caused death of patient.

3. Being aggrieved due to conduct of treating doctors, the Complainant initially filed the Complaint before the State Commission to claim Re. 1/- as compensation. The State Commission for want of pecuniary jurisdiction dismissed the Complaint with liberty to file fresh complaint before the appropriate forum.

Thereafter, the Complainant filed a Complaint before the District Forum, Kolkata. According to the Complainant the value of the life of his wife could not be made, but was praying a token sum of Rs.1 (Rupee one) as compensation for the deficiency in service of the ICU doctor on duty.

4. The District Forum, Kolkata (I) vide its Order dated 13.10.2017 dismissed the Complaint with the following observation:

Having regard to the facts and circumstances of the case we hold the complainant has miserably failed to prove the case against the Ops that there was any medical negligence on their part or any unfair trade practice adopted by the OP-1. Therefore, we hold that the case filed by the complainant has got no merit and the complainant will not be entitled to get any relief as prayed for.

5. Being aggrieved, the Complainant filed an Appeal before the State Commission. The appeal was allowed vide Order dated 13.02.2020 with the following observations:

Here the complainant claimed a token compensation (Re 1/-) and other consequential reliefs but in his Petition of complaint, the appellant herein, stated that he was fighting for a cause, as pointed out earlier and in the given facts and circumstances of the case and on perusal of the report of the Experts’ Board, we find substance in his allegations. Since the complainant does not pray for any substantive amount of compensation, more discussion on this issue would be a fruitless exercise, rather concurring with the findings of the Board and Experts’, as quoted hereinabove we find substance in the allegations of carelessness of the Hospital Authority as well as the attending Doctors i.e. the OPs/Respondents herein and we find substance in the argument, as advanced by the Learned Counsel for the Appellant.

Hence, we allow the Appeal set aside the judgment impugned and dispose of this Appeal by upholding the fact that the complainant had sufficient cause to raise his grievance against the OPs/Respondents but we do not impose any penalty by awarding compensation or cost in the light of the decision of the Hon’ble National Commission in Ramesh Kr.Sihan Hans -Vs- Goyal Eye Institute and Ors (reported in 2012(2) CPR 424 (NC)). Thus we dispose of this Appeal accordingly with the aforesaid observations.

6. Being aggrieved, the hospital (OP-1) and the doctor (OP-2) have filed two Revision Petitions.

7. We have heard the learned Counsel for parties, perused the material on record and gave our thoughtful consideration.

8. On perusal of record, it is transpired that the additional Chief Judicial Magistrate 24 Parganas (North) at Sealdah directed the Superintendent of NRS Medical College for opinion from Medical Board. Accordingly, the Medical Board was constituted comprising of five members headed by HOD, Department of Forensic & State Medicine as a Chairperson. The Board sought opinion of Prof. Ajay Gupta, Medico legal expert, it was received on 15.12.2016. Dr. Ajay Gupta stated that death of Mrs. Susmita Mitter was due to rash and negligent act on the part of the consultants and other attending doctors. The Medical Board's opinion is reproduced as below:

Mrs. Susmita Mitter w/o Madhab Chand Mitter was a patient of metastatic Carcinoma Ovary post Chemotherapy. She had an Indwelling Chemoport (needed for treatment) and developed systemic candidiasis subsequently septicemia with hypovolemic shock, respiratory failure and renal failure. She was requiring high dosage of inotropic support for maintaining blood pressure and ventilatory support for maintaining respiration. The patient already suffering from terminal disease with such serious life threatening complications developed cardiac asystole and could not be revived inspite of CPR being given as per ACLS protocols.

However there are some technical lapses and improper documentation of the treatment procedure in the terminal stages but whether that has lead to or hastened the death process of the patient who was already suffering from malignancy disease in terminal stage could not be ascertained.

9. It is pertinent to note that after going through all the medical records and opinion of Prof Ajay Gupta; the medical board made following observations:

1. The patient **has not been attended by the doctors** of surgical ICU from 2 A.M. of 30.7.2014 to 9 a.m. same day as there is no documentation of notes. Such serious patients should be attended frequently.
2. There is no documentation of notes informing patient's relatives about the seriousness of patient's condition.
3. The treating consultants were not informed about the deterioration of patients condition as there is no documentation of notes.
4. However no definite evidence of absence of any doctor on duty of surgical ICU (as complained by the petitioner) was not found as there are notes at 2 a.m. on 30.7.2014 and 9 a.m. on 30.7.2014. It can only be confirmed if attendance sheet and duty roster of doctors of that particular day can be checked.

10. The Complainant's main grouse was on the lapses during treatment of the patient from 2 a.m. to 9.45 a.m. on the fatal day 30.7.2014, no doctor (OP-2 or 3) attended the patient in the Surgical ICU. We would like to carefully go through the certain observations made by the State Commission which are reproduced as below:

If we consider the above findings, of the Experts' Board in the backdrop of the case we find that the complainant concentrated his allegations about the last day (from 2 a.m. to 9.45 am on 30.07.2014) of treatment of the patient. Ld. D.C.D.R.F. in the Impugned judgment tried to impress that OPs, Hospital and the Doctors were not negligent in the entire episode of her treatment. Fact remains, when the patient's condition became critical in the surgical ICU in night of 30.7.2014, she was not attended by the Doctors i.e. OPs no.2 and 3 herein though they were entrusted to do so but their carelessness furthered sufferings of the patient who became restless before breathing her last. In such a state it caused the hamper of emotions of her relatives and it became the multi super special carelessness on the part of the respondent/a multi super specialty Hospital.

11. The Complainant has also filed a complaint (C98/2015) before the West Bengal Medical Council(WBMC) Kolkota. He raised following issues against Dr. Siddhartha Soman Mookerjee & Dr. Nilanjan Indu:

- (1) Act of rash and negligence
- (2) Not attending the patient as frequently as required
- (3) Not contacting/calling consultants under whom the patient was admitted
- (4) Medicine (Vasocan) was not administered and returned back
- (5) Patient's relatives were not at all informed about the seriousness of patient's condition

The WBMC concluded that "No negligence could be substantiated against Dr. Siddhartha Soman Mukherjee and Dr. Nilanjan Indu", The relevant observations of WBMC are reproduced as below:

1. Dr. Siddhartha Soman Mookerjee (was on duty from 7 pm of 29.04.2014 to 7 am on 30.04.2014). He left the hospital at 7.05 am (as per biometric record) & Dr. Nilanjan Indu was (on duty from 10 am of 29.07.2014 to 10 am of 30.07.2014). Both were rotating registrar of ICU working under the instructions of primary consultant and were equally responsible for all the patients admitted to ICU during duty hours.
2. The ICU record shows till 2 am on 30.07.2014. Sr. S.S. Mookerjee mentioned the findings and duly written the instructions. It was observed that Dr. Nilanjan Indu attended the patient in the morning as per requirement. The patient was very critical with terminal ailments during last few days.

12. Thereafter by the Complainant preferred an Appeal before the Board of Governors in Suppression of MCI and the Ethics Committee on 26/02/2019 held that(operative para)

"...The Ethics Sub-Committee after hearing both the parties in detail and after going through all the case records concluded that there is no infirmity in the order dated 21.05.2018 of the West Bengal Medical Council and therefore, the Ethics Committee decided to upload the same."

13. No doubt, in the instant case the act of petitioners could be attributed to the technical lapses or improper documentation of the treatment of terminally ill patient. In our view, in the instant case the "**doctrine of loss of chance**" is also not come to the help of Complainant. A patient's claim of loss of chance because of negligence must also establish actual harm specifically caused by the delayed treatment or diagnosis. Admittedly, from the medical record, it is evident that the patient was in very critical stage and under proper supervision and treatment.

14. The Consumer Protection Act is benevolent social legislation, but it should not be a "halter around the neck" of the doctors. The Hon'ble Supreme Court in **Kusum Sharma & Others vs Batra Hospital & Medical Research Centre and others**[\[1\]](#) observed that:

Consumer Protection Act, (CPA) should not be a "halter round the neck" of doctors to make them fearful and apprehensive of taking professional decisions at crucial moments to explore possibility of reviving patients hanging between life and death.

It was further observed as,

“It is a matter of common knowledge that after some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish.”

15. Relying upon the opinion of WBMC, the Medical Board and following the principles laid down in the Kusum Sharma’s judgment (*supra*), we don’t think it was a case of strict liability of medical negligence. The patient was in SICU and very critical (in death bed). It should be borne in mind that, in most of the hospitals in our country the doctor: nurse ratio in the ICU is inadequate to take care of all serious patients. Considering the peculiarity of the case, in our view, medical negligence was not evident from the doctor(s) in SICU except the technical lapses and coordination between the on duty doctors and nursing staff.

16. The Revision Petitions are allowed.

We request the hospital authority to improvise their functioning to avoid such lapses in future.

[1] (2010) 3 SCC 480

.....
DR. S.M. KANTIKAR
PRESIDING MEMBER

.....
BINOY KUMAR
MEMBER