

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
WEST BENGAL
11A, Mirza Ghalib Street, Kolkata - 700087**

**First Appeal No. A/1313/2017
(Date of Filing : 19 Dec 2017)
(Arisen out of Order Dated 13/10/2017 in Case No. Complaint Case No. CC/144/2016 of
District Kolkata-I(North))**

1. Mr. Madhab ChandMitter

S/o Lt. Nemai Chand Mitter, Monidham, P-4, Motijheel
Avenue, P.S. Dum Dum, Kolkata -700 074.

.....Appellant(s)

Versus

1. Apollo Gleneagles Hospital Ltd.

58, Canal Circular Road, P.S. Phoolbagan, Kolkata -700
054.

2. Dr. Dipankar Ganguly, Director, Medical Service,
Apollo Gleneagles Hospital

CA-91, Sector-I, Salt Lake City, P.S. Bidhannagar(N),
Kolkata -700 064.(Stands deleted as per order No.5,
dt.13/09/2018)

3. Dr. Siddhartha S. Mookerjee

S/o Sanjay Mookherjee, 20/1/2, Ballygunge Place, P.S.-
Gariahat, Kolkata -700 019.

4. Dr. Nilanjan Indu

S/o Santosh Kr. Indu, 86, Madaripur Pally, P.S.-
Khardaha, Dist. North 24 Pgs., Kolkata -700 118.

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE ISHAN CHANDRA DAS PRESIDENT
HON'BLE MRS. SAMIKSHA BHATTACHARYA MEMBER
HON'BLE MR. SHYAMAL KUMAR GHOSH MEMBER**

**For the Mr. Mr. Sagnik Bose, Advocate
Appellant:**

**For the Ms. Sritoma Mondal, Mr. Prabir Basu, Advocate
Respondent:**
**Mr. Subhrangshu Banerjee, Advocate
Mr. Abhik Kr. Das, Advocate**

Dated : 13 Feb 2020

Final Order / Judgement

HON'BLE MR.JUSTICE ISHAN CHANDRA DAS,PRESIDENT

This Appeal has been directed against the Judgement and Order dated 13.10.2017 passed by Id. D.C.D.R.F. , Kolkata Unit I in C.C. 144 of 2016 where Id. Forum concerned while disposing of the said Complaint Case dismissed it on contest against Opposite parties without cost and being aggrieved by such judgement and order of dismissal, the present Appeal has been preferred by the Complainant.

Briefly stated the case, of the Appellant/Complainant (and hereinafter referred to as the Complainant for convenience of discussion) was that his wife Smt. Susmita Mitter, since deceased, while suffering from ailments was advised and subjected to a C.T. scan at the premises of the Hospital/OP NO.1 (Apollo Gleneagles Hospital Ltd. , Phulbagan, Kolkata)/ OP No.1 /Respondent No.1 (hereinafter referred to as the OP No.1) and subsequently it was detected that the patient was suffering from ovarian cancer and accordingly the patient was advised for admission at the said Hospital and she was accordingly admitted on 23.2.2012 at the OP NO.1/ Hospital where she had to undergo surgical treatment by Dr. Subhankar Deb/Onco Surgeon on 24.2.2012 and she was discharged from the said Hospital on 4.3.2012. Subsequently, the patient was referred to Dr.P.N.Mahapatra, a senior Consultant Oncologist of the OP NO.1/ Hospital and under his advice and supervision Chemo Therapy and other necessary medicinal treatments were being administered to the patient who got such treatment periodically staying at her home and getting admission periodically for therapies and other treatments. The patient was under regular monitoring and check up as advised by the Doctors. In June 2013 said Dr. Mahapatra in course of periodical check up disclosed that the cancerous growth recurred and a further doses of Chemo Therapies were administered along with necessary supportive treatments. In course of this treatment on 18.2.2014, a Chemo Port was implanted surgically at the operation theatre of the OP NO.1/Hospital by Dr. Subhankar Deb, Onco Surgeon, on the advice and guidance of Dr.Mahapatra. With a view to ensuring medical care under qualified professional, medical support and monitoring, the patient was admitted to the facility of the OP NO.1 on 20.7.2014 at the surgical ICU. On 29.7.2014 as per advice of Dr.Mahapatra Chemo-Port was surgically removed by Dr. Subhankar Deb at O.T. No.3 of the OP NO.1/Hospital and she had been shifted back to the surgical ICU and she was stated to be in a stable condition. In the evening of 29.7.2014 it was intimated to the complainant from the Nurses' desk of surgical ICU as well as /Respondent NO.3 herein (Dr. Siddhartha S.Mukherjee) that he would be the in-charge of the surgical ICU till 10 a.m. on the next day i.e. 30.7.2014. The complainant paid visit and enquired about the condition of the patient on 30.7.2014 at 6.30 a.m. where he was intimated that the blood pressure of the patient was falling drastically to which the complainant enquired about the Respondent No.3, who was supposed to be in the sole charge of the surgical ICU, to ensure medical care of the patient but he found that the Respondent NO.3 already left the hospital. When the complainant tried to consult Dr.Mahapatra or Dr. Deb who were the primary consultants for requesting them to visit the surgical ICU and to attend the patient, the Authority did not take positive steps on that count. When the

complainant was at a loss and was running around in search of a Doctor who could attend the patient, he found the Respondent No.4 (Dr. Nilanjan Indu) in another ICU and on being requested by the Complainant, he gave just a cursory glance and without any consultation with the senior Doctors or the Hospital Management he advised certain medication to the nurses and left without ensuring administration of such medication upon the patient. The complainant continued to wait for a Doctor to attend the patient properly but soon afterwards at about 9/15 a.m. the complainant was informed by the Nurses of surgical ICU that the patient suffered a cardiac arrest and cardio Pulmonary Resuscitation (CPR) was being administered on her. The complainant again began to search for the Respondent no.3 or the consultant Doctors and requested the nurses as well as the Respondent no.4 to contact the Consultants for obtaining necessary guidance but no effective attempt was made for the same and ultimately at about 9/45 a.m. the complainant was informed that the patient died. The Complainant enquired from the Respondent No.2 on 30.7.2014 the whereabouts and reasons for absence of the Respondent NO.3 at the fateful hours but no positive response was given to him and subsequently the complainant when requested the Hospital Authority for medical records of the patient, it was not supplied to him. The complainant further alleged that due to gross negligence on the part of the Respondents/OPs , the patient met premature death, particularly when she was shifted to the surgical ICU after operation in a stable condition. The complainant preferred an Application U/s 200 of the Code of Criminal Procedure against the Respondents No.2,3 and 4 before Id. CJM, Sealdah, and subsequently it was transferred to Id. Judicial Magistrate, 6th Court and cognizance was taken U/s 304A of the IPC against all of them and the accused persons, against whom the Cognizance was taken by Id. Judicial Magistrate , preferred a Revisional Application before the Hon'ble High Court, Calcutta praying for quashing of the proceeding pending before the Id. Judicial Magistrate. The Hon'ble High Court, while disposing of the said Revisional application directed Id. Magistrate concerned to hold further enquiry U/s 202 of the Code of Criminal Procedure. The complainant further filed a Petition of Complaint before the State Consumer Disputes Redressal Commission claiming a compensation but the said petition of complaint was dismissed for want of pecuniary jurisdiction and liberty was given to the complainant to file a fresh complaint before the Appropriate Forum for claiming proper reliefs. The complainant alleges that the value of the life of his wife cannot be ascertained and as such he is praying for a token sum of Re.1 (Rupee one) as compensation upon the allegation that he lost his wife due to the gross negligence and deficiency in service on the part of the OP/Hospital and that prompted him to take recourse of the D.C.D.R.F. concerned claiming reliefs as noted earlier.

A joint Written Version was filed by the OPs NO.1, 3 and 4 i.e. Apollo Gleneagles Hospital, Dr. Siddhartha S. Mukherjee and Dr. Nilanjan Indu who alleged that the Complaint Case was not maintainable, the same being hit by law of limitation. Denying the allegation of medical negligence or deficiency in service on their part these OPs in their Written Version admitted that on 29.7.2014 and 30.7.2014 the OPs NO.3 and 4 were on duty for the night shift in the surgical ICU of the OP NO.1 from 7

p.m. to 7 a.m. of the next day and at 6.30 p.m. on 29.7.2014 the wife of the complainant was shifted from the OT to the bed and she was in terminal condition with advanced metastatic malignancy with omental and peritoneal deposit at her abdomen, distending and preventing her from breathing for which she was mechanically ventilated along with severe sepsis with septic shock. Denying and disputing the material allegation as contained in the body of the Application these OPs in their joint Written Version categorically claimed that the complainant and her family members were duly counselled and explained about the patient's critical conditions at regular interval as it would be evident from the clinical notes. They also admitted that the OP No.3 left the hospital at about 7.05 a.m. on 31.7.2014 on completion of his duty and hand over the charge of the patient to the OP NO.4. The OPs further claimed that the cardiac arrest is an emergency life threatening situation with very limited time available to react in order to save life. They also claimed that the Doctors took all possible efforts to save the life of the patient but could not come out successful. Denying and disputing all other material allegations as contained in the body of the application, the OPs herein prayed for dismissal of the Complaint case with costs.

Ld. D.C.D.R.F. while disposing of the Complaint Case found that the complainant 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 them, held the Complaint case devoid of merit and dismissed the same accordingly.

Now the point for consideration is whether ld. D.C.D.R.F. was justified in dismissing the Complaint Case.

The instant case had a long chequered history . The Complaint Case being CC/380/2015 was filed before this Commission which was dismissed at the initial stage on 14.10.2015 with observation that the said Complaint Case was not maintainable for want of pecuniary jurisdiction and liberty was given by this Commission to file fresh Complaint before the appropriate Forum having pecuniary jurisdiction to entertain the same. The present Complainant thereafter filed the instant Complaint Case being CC/144/2016 before ld.D.C.D.R.F., Kolkata Unit I alleging medical negligence against the OPs and claimed compensation of a sum of Re.1/- (Rupee one) along with other consequential reliefs, as it is evident from the Petition of Complaint being CC/144/2016.

The factual aspects of the matter are not disputed at all. It is admitted by the parties to the proceeding that the Complainant got his wife admitted at the OP No.1/Hospital on 20.7.2014 at the surgical ICU of the OP No.1 with a view to ensuring adequate medical care under qualified professional, medical support and monitoring of the patient. It is also not disputed that the wife of the complainant Susmita Mitter was a patient of cancer and the complainant started her treatment at the OP No.1/Hospital under different Doctors/Oncologists with effect from 22.2.2012 till she breathed her last on 30-7-2014. The complainant never alleged any sort of medical negligence

against the Hospital or the treating Doctors in course of the long lasting treatment for about two years, save and except the date (i.e. on 30/7/1014), when the complainant found that her patient who was in a critical condition was left carelessly at the surgical ICU and she ultimately breathed her last.

Ld. Counsel appearing for the Complainant/Appellant in course of his argument submitted that the wife of the Complainant (and hereinafter referred to as the patient) was admitted to the Hospital where she was made victim of negligence and no care, far to speak of due care, was given to her at the time of such treatment. Clarifying the term 'negligence' he submitted that the Opposite Parties/the Hospital Authority as well as the Doctors did not provide due care and attention to the patient when much care and attention were needed to minimize her sufferings. With reference to the averments as contained in the body of the Application of CC/144/2016 he submitted that the Complainant filed the instant Complaint Case not for realizing any amount from the Hospital Authority or the Doctors rather he was fighting for a cause to give a message to the medical fraternity that such thing does not recur in any other cases where the patient who has been in the care and protection of the Hospital is not neglected at the appropriate time. It was emphatically submitted before us that the patient only required diligent and proper care from the Staff/Doctors of the Hospital who should be held liable on the negligent conduct and the Hospital Authority was not only responsible for the staff it provides but also for independent contractors such as Surgeon, Anesthetist or Doctors who attend or operate a particular case.

Ld. Counsel for the Appellant/Complainant in course of argument while criticizing the findings of Ld. D.C.D.R.F. admitted with all fairness the principles regarding medical negligence as laid down by the Hon'ble Apex court in different cases, as reflected in the judgement but his client never claimed that her wife was not a victim in course of her treatment. Clarifying the term negligence he submitted that Ld. D.C.D.R.F. in the impugned judgement did not bring into account the evidence adduced by either of the parties but it concentrated its discussion which was not the matter in issue, dismissed the Complaint on some untenable grounds, such as, non-joinder of parties etc. Relying on a decision of the Hon'ble Apex Court in Pooja Sharma & Ors -Vs- Maraja Agrasen Hospital & Ors (in Civil Appeal no. 9461 of 2019) he submitted that not only the treating Doctors were liable for negligence but the Hospital Authority who has engaged those Doctors in treating the patient were equally responsible and as such it would be vicariously liable for the acts of negligence, committed by the Doctors.

Ld. Counsel for the Respondents led emphasis on his argument and drew our attention to the findings of the Ethics Committee formed by the Medical Council of India dated 23.9.2019 which disposed of the Appeal of the Complainant filed against the Order of the West Bengal Medical Council where the State Ethics Committee upheld the findings of WBMC and decided the same accordingly which is quoted below :-

The Ethics Committee decided as under :-

“.....The Ethics Committee on scrutiny of appeal and perusal of documents noted that the appellant i.e. Sri Madhab Chand Mitter had initially filed a complaint in West Bengal against alleging gross medical negligence on part of Dr.Siddhartha Soutan Mukherjee, Dr. Nilanjan Indu & Dr. Dipankar Ganguly of Apollo Glenagles Hospitals, Kolkata, West Bengal in the treatment administered to the applicant's wife Late Smt. Susmita Mitter due to cancerous growth in her ovary, resulting in death of the patient.

The Committee further noted that the West Bengal Medical Council after examination of complaint and hearing all the concerned doctors and others, passed an order on 21.05.2018, the relevant part of the order of West Bengal Medical Council is as under –

No negligence could be substantiated against Dr. Siddhartha Soman Mukherjee and Dr.Nilanjan Indu.

The Council, at its meeting dated 26.04.2018, considered the report of the concerned P & E Cases Committee and accepted their finding that no negligence could be substantiated against Dr. Siddhartha Soman Mukherjee and Dr. Nilanjan Indu in the management of the patient, Ms. Susmita Mitter, who was admitted in a critically ill condition in the Hospital and breathed her last after three days ventilator support”

Further, the Committee noted that the appellant Sri Madhab Chand Mitter was not satisfied with the decision of the West Bengal Medical Council and filed an appeal dated 19.06.2018 in the Council office.

The Ethics Committee further discussed the matter in detail and after detailed deliberation, the Committee decided to accept the said appeal.

Whereas, the Ethics Committee of the Council investigated the matter and recorded the statements of Sri Madhab Chand Mitter was represented by his Counsel , Sh.Sujoy Chatterjee, Dr.Siddhartha Soman Mukherjee, Dr. Nilanjan Indu.

The above matter was considered by the Ethics Committee at its various meetings and lastly meeting held on 26th February, 2019. The operative part of proceedings of the said meeting is reproduced as under :-

“....The Ethics Subsequent-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 uphold the same.”

Ld. Counsel for the Appellant while expressing the grievance of the Complainant about the conduct of the Hospital Authority in dealing with the patient at her crucial stage and tried to impress that the Hospital Authority who was liable to maintain

records for providing them to the patient or their attendants within 72 hours of the request but in the present case it was not done for which the complainant had to take legal action before a regular Court and ultimately as per direction given by the Competent Courts including the Hon'ble High Court he got such records of treatment which he called a serious lapse on the part of the Hospital Authority.

The fact remains the Complainant being the husband of the patient did not raise any objection nor he challenged correctness of his wife's treatment right from the initial stage till the date before she breathed her last. But his main grievance is concentrated to the deficiency of caring the patient from 2 a.m. to 9.45 a.m. of 30.7.2014 when he lost his wife for ever. In this context, we have to consider the findings of the Experts' Board formed for giving opinion regarding alleged medical negligence/carelessness in case of treatment of the patient Ms.Susmita Mitter forming the following opinion :-

“From the brief summary of the complain according to the petitioner Madhab Chand Mitter on 30th July 2014 at around 6.45 a.m. the petitioner when visited the ICU to see his wife was told by attending nurses that the patient's blood pressure has fallen drastically. The petitioner when looked for the doctor on duty of surgical ICU Dr. Siddhartha S.Mukherjee found him not to be present there. When asked about his whereabouts , the nurses said he had already left, although his duty was till 10 a.m. on the same day.

He then asked another doctor from the adjoining ICU to look after his patient. The doctor on request visited the ICU and advised the nurses to give some medicines. Later at around 9.15 a.m. the petitioner was informed from the nursing desk that his patient has suffered cardiac arrest and ultimately at 9.45 a.m. he was informed that the patient (Mrs Susmita Mitter) has expired.

From the opinion given by Prof A.K.Gupta it is stated that death of Mrs. Susmita Mitter was due to rash and negligent action the part of the consultants and other attending doctors and Director, Medical Services.

After going through all the medical records, bills and opinion of Prof Ajay Gupta the medical board has made the following observations:

Opinion on the complaint made by the petitioner ;

Considering the patient condition a case of metastatic Carcinoma Ovary post Chemotherapy with Candida Septicaemia on high intropic support and ventilator support

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. “

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 a.m. on 30.7.2014) of treatment of the patient . Ld. D.C.D.R.F. in the impugned judgement 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 the 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 speciality Hospital.

Ld. D.C.D.R.F. instead of addressing the issues involved in the Complaint case unnecessarily quoted some decisions of the Hon'ble Higher Courts and came to the conclusion that the complainant did not deserve any relief.

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 Id.Counsel for the Appellant.

Hence, we allow the Appeal set aside the judgement 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.

Parties do bear their respective costs of Appeal.

**[HON'BLE MR. JUSTICE ISHAN CHANDRA DAS]
PRESIDENT**

**[HON'BLE MRS. SAMIKSHA BHATTACHARYA]
MEMBER**

**[HON'BLE MR. SHYAMAL KUMAR GHOSH]
MEMBER**