

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

**Complaint Case No. CC/479/2018
(Date of Filing : 02 Jul 2018)**

1. Mr. Himadri Kr. Guha Roy

13, Purbayan, Canal South Road, Chingrighata, Kolkata - 700
105.

.....Complainant(s)

Versus

1. Dr. Ranjan Sarkar & Ors.

Nephrologist, Dialysis Unit, AMRI Hospital Ltd., JC-16 & 17,
KB-24, Salt Lake City, Sector-III, Kolkata - 700 098.

2. Mr. Rupak Barua, CEO, All Units, AMRI Hospital Ltd.

P-4 & P-5, C.I.T. Scheme- LXXII, Block - A, Gariahat
Road(beside Dhakuria Bridge), Kolkata - 700 029.

3. Mr. Barun Sharma, Head, All Units, AMRI Hospital Ltd.

A Unit, AMRI Hospital Ltd., JC-16 & 17, KB-24, Salt Lake
City, Sector-III, Kolkata - 700 098.

4. AMRI Hospital Ltd.(Rep. by CEO)

P-4 & P-5, C.I.T. Scheme- LXXII, Block - A, Gariahat
Road(beside Dhakuria Bridge), Kolkata - 700 029.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE MANOJIT MANDAL PRESIDENT

HON'BLE MRS. SAMIKSHA BHATTACHARYA MEMBER

HON'BLE MR. SHYAMAL KUMAR GHOSH MEMBER

PRESENT:In-person, Advocate for the Complainant 1

Ms. Binota Roy, Moushumi Sarkar, Advocate for the Opp. Party 1

Mr. Barun Prasad, Advocate for the Opp. Party 1

Mr. Subrata Mondal, Mr. Barun Prasad, Advocate for the Opp. Party 1

Dated : 27 Sep 2023

Final Order / Judgement

MR. SHYAMAL KUMAR GHOSH, MEMBER

1. The instant consumer case has been filed by the Complainant against the Opposite Parties praying for compensation amounting to Rs. 50,000,00/- .
2. The factual matrix of the case is that the complainant's wife namely Manju Guha Roy aged about 67 years was a patient of diabetic mellitus type -2 . Her both kidneys were damaged due to several dialysis. Her first dialysis started in Bellvue Hospital , Kolkata. On earlier occasion the dialysis was conducted by the doctor thrice in a week. But later it was reduced to twice in a week. She was later shifted to AMRI Hospital, Salt Lake for dialysis on 04.11.2014. The necessary fees and charges were paid to that effect.
3. OP No. 1 is Nephrologists , Head of the Dialysis Unit, AMRI Hospital. OP No. 2 is CEO of AMRI Hospital. OP No. 3 is the Head of all Units, AMRI Hospital, Salt Lake and OP No. 4 is AMRI Hospital Ltd. represented by CEO i.e. OP No. 2.
4. On 02.12.2016 the dialysis of the complainant's wife was not done due to failure of perm catheter. The complainant's son contacted with OP No. 1 over phone for replacement of perm catheter. OP No. 1 told him to admit his mother immediately at the Hospital. The complainant realized that the admission of the patient at the Hospital was purely for commercial purpose. The complainant lost his

faith upon the OP No. 1 and got the catheter changed by Dr. S. Chatterjee on 05.12.2016 at Jems Long Clinic Pvt. Ltd. The patient was discharged within two hours.

5. In the last week of January, 2017 due to catheter infection the patient namely Manju Guha Roy suffered high fever. The said infection was hospital acquired but no formal treatment was given by OP No. 1. Thereafter, the complainant consulted with a reputed Nephrologists namely Dr. Pratik Das of NH Rabindra Nath Tagore Hospital on 31.01.2017. Dr. Das examined the patient alongwith all medical records. Dr. Das treated the patient and advised her to follow some advises which are as under :

- a. CXR PA
- b. Single use dialyzer
- c. Vancomycin Injection (1gm) after HD with 100 ml NS on next 3 dialysis

(Dr. Pratik Das verbally advised the complainant's wife to repeat 600 mg Lizolid which she used earlier after replacement of old catheter).

6. The next dialysis date was fixed on 03.02.2017. The complainant took the preparation on 02.02.2017 and purchased Vancomycin Injection and other followings as per prescription of Dr. Pratik Das. On the scheduled date i.e. 03.02.2017 complainant's son contacted with Technician of the Dialysis Unit and showed him the prescription of Dr. Pratik Das. But, unfortunately, when the Technician contacted with OP No. 1, a direction was given not to use Vancomycin. So, the Technician returned the prescription to the complainant's son and on 03.02.2017 no Vancomycin Injection was given to the patient after dialysis and on subsequent dialysis dates.
7. On 04.02.2017 the complainant alongwith his son visited the Chamber of OP No. 1 and enquired the reason for not application of Vancomycin. OP No. 1 replied that since Vancomycin was prescribed by other Nephrologist he was not bound to apply the said injection.
8. OP No. 1 always advised to the complainant's son to use less potent drug namely Lizolid 600 mg. But the doctor never uttered the use of Vancomycin injection.
9. After 45 days i.e. 14.03.2017 (since Vancomycin injection was first prescribed by Dr Pratik Das on 31.01.2017) the OP No. 1 used Vancomycin injection when the condition of the complainant's wife deteriorated. OP No. 1 used the aforesaid injection on 14.03.2017 without seeing the report of the test. He further advised on the same date i.e. 14.03.2017 for CRP , for full blood count, for central blood culture and for peripheral blood culture. The cost of Vancomycin injection and others medicines amounting to Rs. 801/- was paid by the complainant's son on 14.03.2017 as per advised of OP No. 1. The next dialysis date was 17.03.2017. It was reported that when blood of the patient was collected on 14.03.2017 at about 4.15 p.m. haemoglobin was 6.7. In such circumstances, the OP No. 1 did not utter the urgency of blood transfusion and /or any further doses of Vancomycin injection on 17.03.2017.
10. Next dialysis date was fixed on 24.03.2017. On that date OP No. 1 did not put the complainant's wife to blood transfusion in spite of deterioration of health of the patient. By this time haemoglobin level had come down to 5.3. The OP No. 1 did not consider the blood transfusion as an emergency situation but fix it after 4 days i.e. on 28.03.2017.
11. On 28.03.2017 two units PRBC were transfused . The delay of blood transfusion became so fatal that thereafter she underwent only one dialysis on 31.03.2017. But unfortunately, on 03.04.2017 early morning the patient passed away due to heart failure.
12. The complainant lodged FIR with Bidhannagar Police Station on 08.04.2017 against the OP No. 1 for medical negligence in respect of the treatment of Manju Guha Roy.
13. CMOH, Barasat constituted an Enquiry Committee in regard to this case. Complainant submitted all relevant medical papers to ACMOH , 24 Parganas(North). The complainant appeared before the Enquiry Committee on 20.09.2017 and substantiated the negligence in the treatment of Manju Guha Roy since deceased.
14. An Enquiry report was submitted to that effect. The recommendations of this Committee are as hereunder :

- i. Dr. Sarkar stated that he did not prescribe Vancomycin resistant bacteria. It is observed that Dr. Sarkar used Vancomycin empirically after HD on 14.03.2017 which he advocated against earlier. Whether Vancomycin is routinely prescribed during a catheter wound infection (which is hospital acquired) following HD is to be verified by Nephrologist specialist.
- ii. There was delay in blood transfusion.

Recommendation :

- iii. Whether Vancomycin is routinely prescribed during a catheter wound infection (which is hospital acquired) following HD is to be verified by Nephrologist specialist.

15. The opinion of Dr. Kanailal Karmakar , Department of Nephrology and Dialysis , RGKMC & H as follows :

‘Vancomycin injection is commonly used as an empirical treatment for suspected Catheter Related Blood Stream Infection (CRBSI) but its time, dose, duration of use depends on clinical judgements, severity of illness and sensitivity of drug assessed by treating clinician as there is potential risk of antibiotic resistance’.

16. Dr. S. Guha Roy , Physician , Salt Lake prepared his opinion and sent the same to ACMOH, North 24 Parganas who sent an opinion/re-inquiry of Dr. S. Guha Roy to CMOH, North 24 Parganas on 12.04.2018 for taking necessary action.
17. In pursuant to the Enquiry report , Dr. Kanailal Karmakar opined that if the said antibiotic is commonly used empirically there should not be any fear of antibiotic resistance. In case of such a concern one should have strictly reserved the use of the antibiotic for culture and sensitivity report. In the given case on 03.02.2017 Vancomycin was not given empirically even if it is considered and commonly used antibiotic is suspected CRBSI as opined by Dr. Karmakar.
18. Next it was stated that the Hb% of Late Manju Guha Roy dropped down to 6.7 g% on 17.03.2017. Blood Transfusion was not given at that time because of ‘ongoing infection’ as per the statement of Dr. Sarkar. Actual reason restrained Dr. Sarkar in transfusion of blood in the setting of ‘ongoing infection’ is not clear. But it was again observed that on 24.03.2017 he advised 2 units of blood transfusion when the Hb% further dropped down to 5.3g% . Said advice was carried out after 4 days i.e. on 28.03.2017. Hence there was definitely delay in transfusing blood to the patient in spite of the fact that Hb level dropped down rapidly.
19. There is a clear gross negligence and deficiency in service on the part of the OPs. and accordingly the complainant has knocked at the door of this Commission for getting proper relief /reliefs as prayed for against them.
20. The OP No.1 contested this case by filing written version stating inter alia that on 24.03.2017 the blood tests were repeated which showed resolutions of infections but there was further dropped in haemoglobin to 5.3%. The patient was advised to have blood transfusion on the next dialysis date and the OP No. 1 did not any access to the patient till she would have come back for next dialysis date. On 28.03.2017 the patient had received two units of packet red blood cells during dialysis without any deleterious effects. Be it noted that the patient was discharged from the dialysis unit without any complaints.
21. Being a senior practising nephrologists, the OP No. 1 /Doctor took reasonable care of this patient but it is very unfortunate that he was facing the blame of inefficiency and incompetency by the family members of the patient. In fact, the medical treatment records of the patient would reveal that the OP No. 1/Doctor had gone that which may reasonable prudent medical practitioner in his place would have and there cannot exist any reason to think otherwise. Actually, OP No. 1 rendered the best medical treatment to the patient as a prudent medical person.
22. By filing written version OP No. 1 further stated that the patient , since deceased, was advised for admission to the Hospital for assessment of malfunctioning permcath. The plan was to insert a temporary dialysis line and performed a CT Venogram and reposition a permcath in either of the Jugular Veins and or attempt to create an AV Fistula which has less incidents of infection and gives a longer/permanent solution as Vascular Access for maintenance haemodialysis. But it was very

- surprising that the patient refused to be admitted at AMRI under OP No. 1/Doctor but went elsewhere for insertion of permcath, which was done in a femoral vein.
23. It is also added that Vancomycin is used in resistant kind of infections, and its levels should be checked prior to deciding the next dose in patients who have got Kidney dysfunctions, especially who are on maintenance haemodialysis. Routing use of Vancomycin for infections of unknown Aetiology is not recommended. Also the dosing of Vancomycin in patients suffering from renal failure is approximated in this country. Vancomycin does not have any role in preventing fresh infections in any individual. She remained stable and Apyrexial for the next few weeks. Question of non-using of Vancomycin does not arise at all.
 24. The patient was continued on oral linezolid and was advised to continue the medicine for two weeks to eradicate the bacteria completely. Femoral catheters are much more prone to infections compared to jugular or subclavian lines. The patient was clinically well and asymptomatic, and apyrexial.
 25. The treatment rendered by the OP No. 1/Doctor was absolutely as per accepted medical protocol and there cannot exist any reason to think otherwise. Accordingly, the OP No. 1 has prayed for dismissal of the instant complaint case with exemplary cost.
 26. OP No. 4 /Amri Hospital contested this case by filing written version stating iner alia that the claims made for damage and /or compensation prayed by the complainant assuming while denying any liability or deficiency on the part of the OP No. 4 is highly exaggerated, fanciful without any basis and are vague and devoid of merits.
 27. The patient was diabetic, hypertensive and was dialyzing through a Perm Cath. The patient was advised 3 times a week dialysis but the relatives continued to dialyses twice a week. In December, 2016 the patient's Perm Cath was malfunctioning and she was advised to get admitted for insertion of temporary line and CT Venogram assessment for upper extremity and jugular veins to plan the next definitive Vascular access for haemodialysis. However, the relatives of the patient were not agreed to stay in hospital for lengthy procedure. So they took her somewhere else for removal of the old Perm Cath and insertion of a new Perm Cath. The new Perm Cath was inserted in the left femoral vein. The patient relative again consulted a doctor outside at the end of January, 2017 during which time the patient defaulted from dialysis for 10 days in the AMRI Hospital. And when the patient returned she was clinically stable. Sometime in February, 2017 patient Mrs. Guha Roy's son consulted Dr. Ranjan Sarkar over phone complaining that his mother was suffering from fever for which Dr. Ranjan Sarkar suggested blood test and prescribed of oral antibiotics, Linezolid. The patient responded with the oral antibiotics. But the patient again has fever with rigor on dialysis on 14.03.2017. Blood tests were repeated which showed sever sepsis for which she was given oral +IV antibiotics. Patient relatives again refused admission. Between 17th March to 24th March, 2017 repeat blood count showed clearance of infection but no improvement in haemoglobin . The patient was advised blood transfusion on her next dialysis as the relatives kept on refusing inpatient treatment. The patient received the blood transfusion without any complications on 28th March, 2017.
 28. The present opposite party no. 4 also stated that the complainant for the purpose of illegal enrichment cooked up false story and shifted the fault upon the soldier of the opposite parties which is highly illegal and without any basis. The answering OP No. 4 further submits that there is no question of principles of res-ipsa-loquitor as the records clearly showed that the patient received a thorough check up and all efforts have been provided as per standard medical protocol in order to recover the patient. Accordingly, the OP No. 4 has prayed for dismissal of the complaint case with exemplary cost.
 29. Order No. 4 dated 14.11.2018 clearly reveals that Mr. Barun Prasad , Ld. Advocate appearing for the OP No. 2 has adopted the written version filed by OP No. 4.
 30. Order No. 5 dated 13.12.2018 clearly reveals that no written version was filed by the OP No. 3 and as such the case was fixed for exparte against the OP No. 3.
 31. The Complainant in person has argued that his wife was undergoing dialysis twice a week during the last two years . Her dialysis was first started at Bellevue Hospital, Kolkata. Thereafter she was shifted to AMRI Hospital. On 02.12.2016, the dialysis of the patient was not done due to failure of perm catheter. The son of deceased patient contacted with Dr. Ranjan Sarkar /OP No. 1 for replacement for perm catheter but the Doctor/OP No. 1 advised my son for immediate admission of patient. The behaviour of the OP No. 1 was rude at that time. The complainant realized that the aforesaid admission was supposed to be a commercial purpose as the haemoglobin and potassium level both were within normal range. The complainant lost his faith upon the OP No. 1/Doctor. The

catheter of the patient was subsequently changed by Dr. S. Chatterjee on 05.12.2016 at James Long Clinic Pvt. Ltd. and to that effect the operation was taken place at the aforesaid Clinic on the self same date i.e. 05.12.2016 at night. Thereafter the patient was discharged within two hours after completion of all procedures. As per schedule the patient went for dialysis on 07.12.2016. Since the complainant did not take the advice of the OP No. 1/Doctor, the OP No. 1/Doctor did not take proper care at the time round visit. In the last week of January, 2017, there was catheter infection which led to high fever. The complainant consulted with another reputed Nephrologist Dr. Pratik Das of NH Rabindranath Tagore Hospital on 31.01.2017. Dr. Das examined the patient and prescribed some medicines alongwith some advise. Be it mentioned here that Dr. Das prescribed Vancomycin injection (1gm) after HD with 100 ML NS on next three dialysis, though Dr.Das verbally advised to repeat Lizolid 600 mg as prescribed by catheter surgeon earlier.

32. The complainant in person further argued that on 03.02.2017 the son of the deceased patient contacted with Technician and showed him the aforesaid prescription of Dr. Pratik Das and requested him to use Vancomycin but the OP No. 1/Dr. Sarkar directed the Technician not to use Vancomycin. That after expiry of 45 days which was on 14.03.2017 OP No. 1/Dr. Sarkar used Vancomycin injection without seeing the report of the test . Dr. Sarkar/OP No. 1 knew the necessity and effectivity of Vancomycin but he used the same on 14.03.2017 when the condition of the patient was so deteriorating. Dr. Sarkar advised the son of the deceased patient to continue less potent Lizolid and did not utter the need for blood transfusion when the haemoglobin level of the patient was at 6.7. On 21.03.2017 the next dialysis date, Dr.Sarkar/OP No. 1 did not advise for blood transfusion. On 24.03.2017 the haemoglobin level of the patient was reduced to 5.3. But unfortunately, the blood transfusion was carried out on 28.03.2017 at a much later date. At last on 03.04.2017 early morning the patient passed away. There is a clear gross negligence and deficiency in service on the part of OP No. 1/Doctor Sarkar attached to the AMRI Hospital. Accordingly, the complainant in person has prayed for relief/reliefs clearly enumerated in the petition of complaint.
33. Ld. Advocate appearing for the OP No. 1/Dr. Ranjan Sarkar argued that on 26.08.2014 for the first time the patient came at the OPD of AMRI Hospital for continuation of dialysis from Bellevue Hospital, Kolkata. As per medical history the patient suffered from type-II diabetes, hypertension and CKD. Sometimes in December, 2016 the patient was advised to take admission to the hospital for assessment of malfunction perm cath. The plan was to insert a temporary dialysis line and performed a city venogram and reposition a perm cath in either of the jugular veins and or attempt to create an AV Fistula which has less incidents of infection and gives a longer solution. the patient, for reasons best to her and her relatives refused to be admitted at AMRI hospital under the OP No. 1 /Doctor. But the complainant went elsewhere for insertion of perm cath which was done in a femoral vein. In the last week of January, 2017 the patient consulted with Dr. Pratik Das without any knowledge of OP No. 1/Doctor for high fever. After consultation the patient came back for dialysis under the OP No. 1. During such time she was not having any fever and was clinically stable. On 03.02.2017, the complainant requested to single use dialysis. She was advised injection Vancomycin 1 gm after each dialysis for three doses. As the patient was not having any fever and was clinically stable, the OP No. 1 had suggested not to use Vancomycin . Routine use of Vancomycin for infection of unknown aetiology is not recommended. Also dozing for Vancomycin in patient suffering from renal failure is approximated in this country. Vancomycin does not have any role in preventing fresh infection in any individual. Sometime later in February, 2017 the OP No. 1/Doctor had also advised to start Linezolid which is a potent anti-staphylococcal antibiotic (Staphylococcus is a prime organism causing infection in long term central lines). But surprisingly the patient, for reasons best known to her and her relatives did not comply with the advice of the OP No. 1. As per verbal report collected by dialysis unit it was revealed that the haemoglobin level was at 6.7, TLC 14.2 with new neutrophil 83% and CRP of 332.14 and on 14.03.2017 Vancomycin injection was given to the patient.
34. On 24.03.2017 there was further dropped in haemoglobin to 5.3%. The patient was advised to have blood transfusion on the next dialysis date as the OP No. 1 /Doctor did not have any access to the patient till she would have come back for next dialysis.
35. The Ld. Advocate appearing for the OP No. 1/Dr. Sarkar has argued that OP No. 1/Doctor has followed accepted medical protocol. So there is no negligence or deficiency in service on the part of him. Ld. Advocate at this stage has relied upon various reputed citations passed by Hon'ble Supreme Court and Hon'ble NCDRC and accordingly he has prayed for dismissal of the petition of complaint with exemplary cost.

36. The Ld. Advocate appearing for the OPs No. 2 & 4 and OP No. 3 have argued that the treatment conducted by Doctors had been made as per standard medical protocol and there was no deviation of negligence in the treatment of the patient. The Enquiry Report did not speak about the negligence in the treatment of the patient by the Doctors, the said Enquiry Report did not say as to whether the treatment conducted by the Doctors are beyond the standard medical practice. Therefore, the allegations of the complainants regarding negligence on the part of the Doctors of AMRI Hospital is not at all tenable. The claim of the complainant towards the compensation amounting to Rs. 50,000,00/- is imaginary, absurd and accordingly the aforesaid claim of the complainant is not maintainable. In absence of Dr. Pratik Das attached to the NH Rabindranath Tagore Hospital and Dr. S. Chatterjee attached to the Jems Long Clinical Pvt. Ltd. and CMOH of District North 24 Parganas, the medical negligence cannot be proved. Ld. Advocate also agitated that there is a specific allegation only against OP No. 1/Doctor and in such situation other Doctors and Hospital should be expunged from the cause title of the instant CC case.
37. Sometimes in February, 2017 the patient was suffering from fever and for that reason OP No. 1/Doctor Ranjan Sarkar suggested blood test and a course of oral antibiotics namely Linezolid. The patient responded with the oral antibiotics. But the patient again suffered from fever with rigor on the date of the dialysis i.e. on 14.03.2017. Blood test showed severe sepsis for which she was given oral antibiotics. Patient relatives again refused for admission. Between 17.03.2017 to 24.03.2017 repeat blood count revealed clearance of infection but no improvement in haemoglobin. The patient was advised for blood transfusion on her next dialysis date. But her relatives refused to take inpatient treatment. The patient received the blood transfusion without any complication on 28.03.2017. Accordingly, Ld. Advocate appearing for the aforesaid opposite parties have argued that there is no fault or negligence on the part of the OPs and as such Ld. Advocates appearing for the OPs have prayed for dismissal of the complaint case with exemplary cost.
38. We have heard the complainant in person and also heard the Ld. Advocates appearing for the OPs at length and in full.
39. We have considered submissions of the respective parties.
40. We have perused the meticulously all relevant documents and papers.
41. The final hearing has been concluded.
42. Having heard the ld advocates and upon careful perusal of the record we seem that the following issues are to be decided in order to settle the disputes between the parties:
- i. Whether the complainant is to be treated as consumer or not as per Consumer Protection Act, 1986.
 - ii. Whether there is any gross negligence or fault on the part of opposite parties.
 - iii. Whether the complainant is entitled to get any relief/reliefs as prayed for against the opposite parties.
43. From the four corners of the record it appears to us that after demise of wife viz. Manju Guha Roy, the complainant viz. Sri Himadri Kumar Guha Roy, being a beneficiary, has filed the instant consumer case relating to medical negligence against the opposite parties. in this respect we can safely rely upon the reputed citation ie Indian Medical Association V.P. Santa and others reported in AIR 1996 Supreme Court 550 in Civil Appeal being no – 688 of 1993 wherein the Hon'ble Supreme Court has been pleased to hold that the beneficiary of any goods or services are to be treated as consumer as per Consumer Protection Act. Accordingly the complainant herein is to be treated as consumer as per Consumer Protection Act,1986. The point no – (i) is thus decided as per above observations.
- The point no (ii) and (iii) both are taken up together in order to consider the instant consumer case.
44. According to the petition of complaint it is admitted that the complaint's wife viz. Manju Guha Roy aged about 67 years was a patient of diabetic mellitus type – 2. Her both kidneys were damaged due to several dialysis. It is also admitted that the patient firstly treated at Bellevue hospital on earlier occasions but thereafter the patient was treated at AMRI Hospital. She was shifted to AMRI Hospital for dialysis on .04/11/2014. The necessary fees and charges were paid by the complainant for aforesaid medical treatment.
45. Upon careful perusal of the discharge certificate issued by James Long Clinic Pvt Ltd it is crystal clear to us that the patient viz. Manju Guha Roy, since deceased was a patient of CKD (cronic kidney disease). The

said document also reveals that the catheter of the patient was changed by Dr. S. Chatterjee, Doctor in Charge of aforesaid nursing home on 05/12/2016 and to that effect an operation was taken place at the said nursing home on the self same date ie on 05/12/2016. Thereafter the patient was discharged from the aforesaid nursing home on the self same date ie on 05/12/2016.

46. We have carefully perused the OP CASE SHEET dated 31/01/2017 issued by NH Rabindranath Tagore Hospital wherefrom it appears to us that Dr. Pratik Das, nephrologist attached with the aforesaid hospital, has examined the patient and advised for CXR PA, Single use dialyzer and vancomycin injection 1 gm after HD. The Dr. Das has also prescribed some medicines clearly reflected in the said document. The said medical report clearly reveals HB level of the patient was 9.60 at that point of time.

47. We have perused (Anx – D), prescription dated 14/03/2017 issued by AMRI Hospital wherefrom it appears to us that doctor of the concerned hospital has advised for full blood count along with other blood report. We have found the report of full blood count (Anx D/1) wherefrom it is clear to us that the haemoglobin level was 6.7 (biological reference interval 12.0 – 15.0) at that point of time. Thereafter on the self same date ie on 14/03/2017 the opposite party no – 1/doctor for the first time used vancomycin injection in order to save the life of the patient which is clearly reflected in (Anx –C), detail routine chart regarding dialysis of the patient. In pursuant to the aforesaid routine chart, it is clear to us that the next date for dialysis was fixed on 17/03/2017. But no blood transfusion was made. It is fact that next dialysis date was fixed on 21/03/2017. No blood transfusion was made on that particular date in order to provide the protection of the life of the patient.

48. The Anx – F, the report of full blood count dated 24/03/2017 reveals that the haemoglobin level of the patient since deceased was 5.3 wherein the biological reference interval indicates 12.0 – 15.0. But unfortunately no blood transfusion was made when it was clearly indicting that the condition of the patient since deceased was deteriorating gradually. The next date ie 28/03/2017 was fixed for further dialysis. The Anx – C clearly indicates that on 28/03/2017 two units PRBC was transfused. But unfortunately patient passed away on 03/04/2017 at about 10.30 AM due to cardio-respiratory failure in a case Type – II diabetes mellitus with chronic renal failure which is revealed from the death certificate issued by Dr. Kamal Chandra Saha.

49. We have carefully perused the report of enquiry committee dated 25/09/2017 wherefrom it appears to us that a Medical Board has been formed with the Dr. S.K. Guha Roy Medical Officer, Sub-Divisional Hospital Salt Lake, Dr. Partha Pratim Guha, Superintendent, Salt Lake SDH and Dr. Swati Pramanick, ACMOH, Bidhannagar and the salient observations of the aforesaid Enquiry Committee are as follows:-

* Dr Sarkar stated that he did not prescribe vancomycin for the fear of vancomycin resistant bacteria. It is also observed that Dr. Sarkar used vancomycin empirically after HD on 14/03/2017 which he advocated against earlier. Whether vancomycin is routinely prescribed during a catheter would infection (which is hospital acquired) following HD is to be verified by Nephrologist specialist.

* **There was delay in blood transfusion.**

50. The Anx-K, the response against the query regarding use of vancomycin injection dated 29/10/2017 wherefrom it appears to us that vancomycin injection is commonly use as an empirical treatment for suspected catheter related blood stream infection (CRBSI) but, its time, dose, duration of use depends on clinical judgments, severity of illness and sensitivity of the drug assessed by treating clinician as there is potential risk of antibiotic resistance.

51. Finally Dr. S. Guha Roy, Medical Officer, Sub-Divisional Hospital, Salt Lake has submitted a Re-Opinion on 11/04/2018 regarding Enquiry Report, in his own hand writing, (ANX – R) wherefrom it appears to us that it is again observed that on 24/03/2017 Dr. Sarkar advised 2 units of blood transfusion when the HB% further dropped down to 5.3g%. The said advised was carried out after 4 days ie on 28/03/2017. **Hence, there was definitely delay in transfusing blood to the patient in spite of the fact that HB level dropped down rapidly.**

52. The aforesaid report further reveals that injection vancomycin which could have been the best option, was not given to the patient because of an untenable reason. Also it is observed that blood transfusion was

much delayed in spite of the fact that HB % of the patient dropped rapidly. Whether these two acts of omission could be constituted as a matter of medical negligence are to be examined further by experts of higher concern.

53. At this stage we can safely rely upon a remarkable judgment **viz Ramesh Chandra Agarwal vs Regency Hospital Ltd & others reported in (2009) 9 SCC 789 wherein the Hon'ble Apex Court** held that there is a need to hear an expert opinion where there is a medical issue to be settled. Section – 45 of the Evidence Act speaks for expert evidence. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case and in course of hearing we can rely safely upon all expert opinions provided by the different doctors and try to reach the finality of the instant case.

54. **Hon'ble Apex court in Bolam-versus-Frien Hospital Management Committe (Known as Bolam Test) reported in 2005 3 CPR 70 (SC)** held that a doctor is not guilty of negligence if he has acted in accordance with a practice so accepted by a responsible body of medical men skilled in that particular art. To come into the conclusion of the case the Bolitho Test should be considered in order to resolve the disputes between the parties. and in this respect we can safely opine that the Bolitho is justifiable whereas the Bolam is defensible. The result of Bolitho is that the judge has to give a reasoned decision and reasoned explanation in the field of expert opinions. This brings balance between both sides ie doctors and the patients.

55. Now at this stage we try to decide whether the opposite party no - 1 / doctor has acted or performed his duties in accordance with accepted medical protocol/procedure that should be decided by this Commission in order to meet the proper justice to the parties.

56. To reach the conclusion it is necessary to understand the meaning of negligence in order to adjudicate medical negligence.

The definition of negligence includes careless conduct and the breach of duty on the part of doctor/doctors in order to take proper/standard care of the patient. The breach of duty may be occasioned either by not doing something, which a reasonable man, under a given set of circumstances would do, or by doing some act, which a reasonable prudent man would not do.

57. In pursuant to the above discussion, though Dr. S. Guha Roy has provided an advice for further expert yet being an expert and prudent medical personality Dr. S. Guha Roy has clearly submitted in his opinion that there was definitely delay in transfusing blood to the patient in spite of the fact that HB level dropped down rapidly (it is admitted that the HB level was 9.6 on 31/01/2017, 6.7 on 14/03/2017 and 5.3 on 24/03/2017). Not only that the enquiry report dated 25/09/2017 also speaks for delay in blood transfusion. So far as delay in transfusion of blood is concerned, we can safely decided that the OP No. 1/doctor has failed to follow the accepted medical protocol in pursuant to the Principle of BalamTest.

58. Regarding use of vancomiycin injection there are so many arguments. Some are in favour of the doctor and at the same time some are also against the doctor and at this stage whether it is an omission on the part of doctor/OP No. 1 or not it is not clear to us due to lack of opinion on this particular point/issue. But depending upon the principle of Bolitho Test there is no hesitation to hold that regarding delayed blood transfusion, to some extent medical negligence on the part of OP No.1/doctor attached to the AMRI Hospital has been occurred and in this respect the medical negligence on the part of OP No.1is proved and the complainant is entitled to get relief/reliefs against the OP No.1only. Accordingly Point nos (ii) and (iii) are thus decided as per above observations.

59. At this juncture how much amount regarding compensation is to be awarded in favour of the complainant that should be decided by this Commission. Be that as it may for deciding the same another important point/issue should be reflected at the behest of the complainant. In his pleadings, the complainant has urged that he lost his faith and confidence upon OP No.1/ doctor attached to the AMRI Hospital and the catheter has been changed by DR. S. Chatterjee on 05/12/2016. But we are astonished by thinking that after losing faith and confidence upon the OP No.1/ doctor, the complainant, thereafter on several occasions, has visited the Amri Hospital for dialysis of the patient/wife under care of OP No.1/doctor. Rather under such

circumstances, we simply find his confidence and faith upon OP No.1/doctor regarding medical treatment of his wife since deceased and to some extent we think that the complainant has failed to act prudently.

60. Be it mentioned here that in his whole averment in the petition of complaint we find allegations against only op no – 1/Dr. Ranjan Sarkar but no allegations have been enshrined in the petition of complaint against the other opposite parties and as such no order should be passed against the other opposite parties ie ops no – 2 to 4.

61. Keeping in view of the above observations and for finality of litigation we are constrained to allow the instant consumer case on contest against the OP No.1 / doctor with costs and dismiss the same on contest against the OPs No. 2 to 4 without any order as to costs. Accordingly,

It is,

Ordered

That OP No.1/ Dr. Ranjan Sarkar is directed to pay compensation amounting to Rs. 5,00,000/- (five lakh) only to the complainant within 60 days from the date of passing of the order.

The OP No.1/Dr. Sarkar is further directed to pay litigation cost of Rs.20,000/- (twenty thousand) only to the complainant within the aforesaid stipulated period of time in default the whole awarded amount ie Rs 5,20,000/- (five lakh twenty thousand) only shall carry interest @ 10% pa from the date of filing of the consumer case (02/07/2018) till full realization.

In case of non – compliance of the aforesaid order by the OP No.1, the complainant is at liberty to put the order in execution.

The consumer case stands disposed of as per above observations.

Note accordingly.

**[HON'BLE MR. JUSTICE MANOJIT MANDAL]
PRESIDENT**

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

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