

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

Complaint Case No. CC/90/2013

1. Smt. Shyamali Sikdar

W/o Late Ananda Kumar Sikdar, Ghosh Para Road, 2,
Antarik, P.O. Bengal Enamel, P.S. Noapara, Dist. North
24 Pgs.

.....Complainant(s)

Versus

1. Dr. Alok Kumar Khan

21, Narkeldanga Main Road (near Chanditala Bus Stop),
Kolkata - 700 011.

2. The Calcutta Medical Complex Nursing Home
Diagnostic Centre and Polyclinic

21, Narkeldanga Main Road, Kolkata - 700 011.

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE KALIDAS MUKHERJEE PRESIDENT
HON'BLE MR. TARAPADA GANGOPADHYAY MEMBER**

For the Complainant: Dr. Kunal Saha (Authorised Person), Advocate
For the Opp. Party: None appears

ORDER

26/02/16

HON'BLE JUSTICE MR. KALIDAS MUKHERJEE, PRESIDENT

This complaint has been filed by the Complainant alleging medical negligence against the OPs.

The case of the Complainant, in short, is that her husband Late Ananda Kumar Sikdar aged 61 years had been suffering from pain in the face and was taken to Dr. T. Banerjee on 20/03/09. He was further taken to the said doctor on 31/03/09 and some medicines were prescribed, but the

pain continued. The patient was thereafter taken to Dr. T. N. Kundu on 13/06/09, but in spite of the treatment the pain continued. The patient was referred by Dr. Kundu to Dr. Alok Kumar Khan, the OP No.1, a specialist in Neurology. On 30/06/09 the patient was examined by OP No.1 and he advised to bring the patient to OP No.2 Nursing Home. Accordingly, the patient was brought to OP Nursing Home and the OP No.1 being the owner of the Nursing Home diagnosed that the suffering from pain was due to a grown up tumor within the brain of the patient and advised immediate surgical intervention. The patient was not informed of any admitted risk and there was no 'informed consent'. The patient was admitted in OP No.2 on 04/07/09 by depositing Rs.50,000/-. The operation was done on 05/07/09 and the tumor was removed. The Complainant was informed verbally by OP No.1 that post operative clotting of blood in the brain was detected and the brain SCAN was done on 09/07/09, but no scan report was shown to the Complainant. Another operation to remove the clotted blood in the brain was done on 10/07/09 without prior intimation to the Complainant and without obtaining 'informed consent'. The Nursing Home Authority failed to supply the medical records, namely, bed head tickets, treatment sheet etc. On 16/07/09 the patient was put on ventilation and his condition deteriorated. The patient was shifted to Ruby General Hospital Ltd. on 29/07/09 and the doctors of the said Hospital on examination of the patient opined that the condition of the patient was critical. There was wide spread septicemia resulting in multi-organ failure and the patient passed away on 02/08/09. The patient expired due to the negligent act on the part of OP Nos.1 and 2. The Complainant has prayed for compensation of Rs.99,99,000/-.

The OPs did not contest the case in spite of service of notice. It appears from the order dated 12/04/14 that the notice in respect of OP No.1 returned with the endorsement 'unclaimed' and that of OP No.2 returned with the endorsement 'refused'.

It has been submitted by the authorized representative on behalf of the Complainant that the OP No.1 diagnosed the ailment as "vestibular schwannoma" which was not serious at all and there was no malignancy and in spite of that the OP no.1 decided for emergency operation. It is submitted that after the first surgery the condition of the patient improved, but subsequently deteriorated and OP No.1 performed the second surgery after which the condition of the patient further deteriorated. It is contended that the complications were accompanied with 'fever of unknown origin' and the OP No.1 referred the patient to Ruby General Hospital. It is submitted that the patient expired due to the negligent act on the part of the OP. It is submitted that because of nosocomial infection at OP No.2 the condition of the patient became critical which the OP No.1 failed to manage. It is contended that the OP No.1 is the Owner of the OP No.2 Nursing Home. It is contended that the patient remained admitted at the OP No.2 Nursing Home for more than a month and in spite of that there was 'debilitated condition' as mentioned in the P.M. report. It is submitted that this remark in the P.M. report shows that the OPs failed to take proper care of the patient which gave rise to the 'debilitated condition' of the patient. It is contended that OP No.2 did not have necessary infrastructure for brain surgery, in as much as, it would appear from the prescription of the OP No.1 that the life saving drugs were not available in the Nursing Home. It is submitted that the Medical Council, West Bengal was approached on 26/08/11, but the matter is still pending there. It is contended that the OPs did not supply the medical papers relating to the treatment of the patient.

We have heard the submission made by the authorized representative of the Complainant and perused the papers on record. It appears that the Complainant wrote letter to the Chief Executive Officer, The Calcutta Medical Complex Nursing Home, that is, OP No.2 requesting him to supply the treatment sheet, bed head ticket etc. of Late Ananda Kumar Sikdar. In the said letter reference was made to the earlier letters dated 06/03/12, 13/03/12, 21/03/12, 27/03/12, 03/04/12, 10/04/12 and 20/04/12. But in spite of the said requests the OP No.2 did not supply the copies of the medical papers to the Complainant. The patient was admitted in the OP No.2 Nursing Home on payment of necessary charges. The Complainant, therefore, is a consumer within the meaning of section 2(1)(d) of the C. P. Act, 1986.

From the papers on record it is clear that after the first surgery the complications arose and the second surgery was performed. After the second surgery condition of the patient further deteriorated and the OP No.1 failed to manage the complications. The Complainant also wrote letter to the OP No.1 alleging medical negligence and claiming compensation, but no reply appears to have been given by the OP No.1. The OP No.1 in the prescription dated 28/07/09 recorded that the condition was very bad and the life saving medicines prescribed therein were not available in local medicine shop. Such fact of non-availability of life saving drugs goes to show that the OP No.2 Nursing Home had no proper infrastructure for brain surgery. OP No.1 is said to be the Owner of OP No.2 Nursing Home. From the certificate issued by OP No.1 dated 29/07/09 it appears that on 18/07/09 the patient suddenly had 'fever of unknown origin' and put under ventilation. The first surgery was done on 05/07/09 followed by the second surgery on 10/07/09. The patient was shifted to Ruby General Hospital on 29/07/09 and he expired on 02/08/09. The patient remained admitted in OP No.2 Nursing Home for one month and the 'fever of unknown origin' clearly goes to show that infection developed when the patient remained admitted in OP No.2 Nursing Home. Both the OPs are responsible for such nosocomial infection. From the materials on record it is clear that the OP No.1 failed to take due care and exercise standard skill as per medical practice and procedure. The OP No.2 lacked proper infrastructure for brain surgery and both the OPs, therefore, are liable to pay compensation to the Complainant.

The authorized representative of the Complainant has referred to the decision of the Hon'ble Apex Court reported in (2014) 1 SCC 384 [Balram Prasad vs. Kunal Saha & Ors.]. It has been submitted that the Complainant is drawing pension to the extent of 20% of the last pay drawn by her husband. It appears from the pension papers submitted by the Complainant that the enhanced rate of the family pension of the Complainant is Rs.1,990/- with effect from 03/08/09. It is submitted that there are dependent children and the Complainant suffered mental agony. It is contended that multiplier of 34 should be applicable. It appears that the patient was 61 years at the time of death and having regard to all the facts and circumstances of the case the compensation of Rs.25 lakh and litigation cost of Rs.50,000/- would be justice and proper.

The complaint case is allowed ex parte against both the OPs. Both the OPs are jointly and severally directed to pay compensation of Rs.25 lakh and litigation cost of Rs.50,000/- to the Complainant within 60 days from the date of passing this order failing which simple interest @ 9% p.a. shall accrue from the date of default till realisation.

[HON'BLE MR. JUSTICE KALIDAS MUKHERJEE]
PRESIDENT

[HON'BLE MR. TARAPADA GANGOPADHYAY]
MEMBER