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2025
MONDAY

Court : **CB-07**
Item : **DL-01**
Bench : **SINGLE**
Matter : **WPA**
Status : **DO**
ID : **266057**
AR : **NANDY**

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 199 OF 2022

SUDIPTA KUMAR KHAN
VS.
WEST BENGAL CLINICAL ESTABLISHMENT COMMISSION & ORS.

MR. ATREYA CHAKRABORTY, ADVOCATE
……for the Petitioner
MR. ATARUP BANERJEE, ADVOCATE
MR. RAJDEEP PRAMANIK, ADVOCATE
MS. SIMIKA ROY, ADVOCATE
……for the Respondent No. 1 & 2
MR. SUBRATA KUMAR BASU, ADVOCATE
MR. SOUNAK SEN, ADVOCATE
MR. NILARNAB PAUL, ADVOCATE
……for the Respondent Nos. 5 & 6

1. The present writ petition has been filed challenging the validity of the order dated 08.11.2021 passed by the West Bengal Clinical Establishment and Regulatory Commission (hereinafter referred to as 'the Commission') in Case No. INT/KOL/2021/506. By the said order, the Commission directed the Clinical Establishment to grant an additional deduction of Rs. 1 (one) lakh to the petitioner.
2. Mr. Chakraborty, learned Advocate appearing on behalf of the petitioner, submits that following an episode of cerebral stroke, the patient, namely Dulal Chandra Ghosh (since deceased), a relative of the complainant/petitioner, was admitted to Seba Magnum PPL Hospital (hereinafter referred to as 'the Clinical Establishment'), located at DD-35, Sector-I, Salt Lake City, Kolkata-700064l, on 21.08.2021. At the time of admission, the patient's relatives were informed that initially, the patient would be placed in the Intensive Care Unit (ICU) for a period of four days, following which he would be shifted to a general bed. An estimated cost of approximately Rs. 80,000 to Rs. 90,000 was provided for the entire course of treatment.

3. Mr. Chakraborty further submits that during his rounds on 25.08.2021, Dr. Biswas, under whose supervision the patient was admitted, noticed swelling in a portion of the left femur over the hip joint. As evident from Dr. Biswas's submission before the Commission, an X-ray was immediately done, revealing that the patient had suffered a fracture as a result of falling from the bed. However, the Hospital, in its justification before the Commission, claimed that the patient had attempted to jump from the bed.
4. He further submits that and subsequently, on 28.08.2021, the patient's relatives were asked to deposit an additional sum of Rs. 50,000 towards the cost of surgery required to treat the fracture. This amount was deposited on the same day, and the surgery was performed on 29.08.2021. He submits that due to this incident, the patient had to remain hospitalized for an extended period, during which he also developed bedsores.
5. According to Mr. Chakraborty, the incident of the fracture and the development of bedsores were direct result of the deficiency in the service provided by the Hospital, and had there been no such deficiency, the patient would not have required an extended stay. He submits that ultimately, the Hospital charged a sum of Rs. 4,15,069/-. However, a deduction of Rs. 53,069/- was given by the Hospital, acknowledging their deficiency in service.
6. Confronted with such a situation, the petitioner was compelled to lodge a complaint before the Commission. After hearing the representatives of both the Hospital and the petitioner, the Commission directed a discount of Rs. 1,00,000/-. Eventually, the case was concluded by directing the Clinical Establishment to pay the said amount of Rs. 1,00,000/- in ten equal monthly installments within the time specified in the order.
7. Mr. Chakraborty submits that the amount awarded can

never be considered just compensation for the deficiency in service by the Hospital, which led to the patient's prolonged stay and poor prognosis. He further submits that, following the incident, the patient had been compelled to use a wheelchair for the rest of his life. He, therefore, prays for an appropriate direction upon the concerned Hospital to pay just and adequate compensation.

8. Mr. Banerjee, learned Advocate representing the Commission, submits that the entire episode concerning the treatment of the patient at the Hospital indicates medical negligence and deficiency in service. Accordingly, the Commission decided to award compensation. He further submits that the Hospital and the petitioner may be directed to settle the matter amicably.
9. Mr. Basu, learned Advocate representing respondent nos. 5 and 6, draws my attention to a specific portion of the order under challenge in the writ petition, and points out that the Commission itself was uncertain regarding the negligence on the part of the Hospital. However, on humanitarian grounds, the Hospital authorities were directed to offer a discount on the bill raised for the patient's treatment. He submits that the Hospital authorities were inclined to make a payment of Rs. 1,00,000/- to the petitioner.
10. Heard the learned Advocates for the respective parties. Perused the materials-on-record.
11. As noted earlier, following the episode of cerebral stroke, the patient was admitted to the Hospital on 21.08.2021. On the very next day, swelling over the patient’s left hip joint was observed. However, an X-ray was not conducted until 25.08.2021. Thus, the Hospital authorities took three days to perform the X-ray, which was necessary to ascertain whether the patient had sustained a fracture. Subsequently, the patient’s relatives were compelled to deposit an additional sum of

Rs. 50,000/-. It was only after this amount was deposited that surgery was performed on the patient on 29.08.2021. The Clinical Establishment failed to offer any satisfactory explanation for this delay, either to the patient's family or before the Commission. Instead, it claimed that the patient had attempted to jump off the bed, thereby causing the fall that led to the injury.

12. If a patient falls from the bed, it indicates that the patient was left unattended, which in itself suggests a deficiency in service on the part of the Hospital. The subsequent episode following the fracture resulted in the prolonged stay of the patient in the Hospital, for which the patient's relatives were compelled to pay an additional amount to the Hospital.
13. The order under challenge indicates that the Commission has directly jumped to the conclusion that the interest of justice would be served by directing a further discount of Rs. 1,00,000/-.
14. Reason is the lifeline of an order. A person affected by the order has the right to know the grounds on which the order was passed. The order of the Commission is devoid of such reasoning. Why did the Commission quantify the compensation amount at Rs. 1,00,000/-? Why was it not fixed at Rs. 2,00,000/- or Rs. 50,000/-? It is unfortunate that the Commission used the word 'discount,' a term not found in the relevant statute.
15. Therefore, I do not find any justification for quantifying the amount at Rs. 1,00,000/-. The order fixing the compensation at Rs. 1,00,000/- is non-speaking. The Commission should have at least considered the amount that the patient's relatives were compelled to pay following the incident of the fracture.
16. As mentioned earlier, the incident of bedsore also indicates certain deficiencies in service, and the Commission has taken a lenient view regarding the mode of payment also. The Clinical Establishment was granted the opportunity to pay the amount of Rs.

1,00,000/- in ten equal monthly installments, although the proviso to Section 33 of The West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017, states that the compensation amount shall be paid within a period not exceeding six months in cases of injury or death. A fracture may be regarded as an injury suffered by the patient.

17. In view of the above, I am inclined to remit the matter back to the Commission. The Commission shall independently assess the amount of compensation and pass an appropriate order in accordance with the relevant provisions of law and in light of the observations made in this order. However, before taking any final decision regarding the quantum of compensation, an opportunity of hearing shall be afforded to the representatives of both the Hospital and the petitioner.
18. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.
19. With these observations and order, **WPA 199 of 2022** is **disposed of**.

(PARTHA SARATHI CHATTERJEE, J)