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28.07.2025
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 3744 of 2024

**KPC Medical College & Hospital
-versus
The State of West Bengal & Ors.**

**Mr. Saptansu Basu, Sr. Adv,
Mr. Ayan Banerjee,
Ms. Riya Ghosh.
...For the Petitioner.**

**Mr. Atarup Banerjee,
Mr. Rajdeep Pramanik,
Ms. Simika Roy.
...For the Respondent Nos. 2 & 3.**

**Mr. Sattik Raut,
Mr. Anupam Ghosh,
Ms. Sudeshna Maji.
...For the Respondent No. 4.**

1. Affidavit filed by the petitioner hospital in Court today is taken on record.

2. The petitioner is aggrieved by the direction passed by the West Bengal Clinical Establishment Regulatory Commission to refund 50% of the treatment cost to the next of kin of the deceased patient. According to the petitioner, there is no finding of negligence and the Commission ought not to have directed refund.

3. On a perusal of the impugned judgment, it appears that the Commission has recorded that the patient attended the hospital on 23rd March, 2023 at 8.16 P.M. and the initial clinical impression was of severe acute pancreatitis and duodenal perforation with AKI was made. The patient was admitted and a number

of investigations were done. The admission sheet serial no.13 the consultation points were kept blank suggesting that the senior doctor was not consulted on the day of admission.

4. The observation recorded in the impugned judgment mentions that the surgery for ERCP induced duodenal perforation is a very difficult one and has to be done in an advanced gastro surgery setup with very experienced surgeon. The hospital does not have an advanced gastro surgery unit.

5. The doctors have opined that the outcome of the treatment may have been different had the patient been referred to a better Centre. The case was also decided to be referred to the West Bengal Medical Council to assess whether correct line of treatment was followed on the patient.

6. The members on the panel of the Commission were of the opinion that there had been a bile duct injury at the time of doing the procedure at the earlier hospital where the patient was taken. The earlier hospital could not identify the problem and made the situation more complex. Even after laparotomy at the hospital, the problem could not be taken care of. The medical members were of the opinion that it was a case of post surgical complication that could not be effectively taken care of. Clear indication by the members of the Commission is that the hospital did not have proper gastro surgery set up.

7. The exact reason for the death of the patient was however, not identified and it was observed that an investigation by a body of expert was required to be done. The doctors of the team expressed strong displeasure in how the patient was treated.

8. At the time of hearing, the Commission gave one opportunity to the hospital to reconcile the issue as to whether substantial part of the treatment cost could

be refunded to which the representative of the hospital agreed. A conciliation was sought to be made but the same failed.

9. Under such circumstances, the Commission, instead of directing refund of substantial amount, directed the hospital to refund 50% of the total cost amounting to Rs.3,43,706/- to the next of kin of the deceased patient.

10. The Commission also held that refund of the amount would not debar the patient family to seek appropriate compensation for medical negligence, if any, established before the appropriate authority.

11. Liberty was also granted to the complainant to approach the Commission afresh in case they succeed before the West Bengal Medical Council.

12. Learned senior advocate appearing on behalf of the petitioner asserts that had the patient not been admitted and emergency treatment not provided, the same would have been held to be negligence on the part of the doctor.

13. It has also been argued that the Commission, without proper ascertainment, ought not to have opined that the hospital did not have proper gastro surgery set up. There is no basis to arrive at such a conclusion.

14. In the instant case, it appears that the hospital admitted the patient and provided treatment for two weeks. According to the team of doctors, the patient ought to have been provided treatment from a hospital with a better gastro set up.

15. The team of doctors are the competent person to assess whether the hospital has a proper gastro set up or not. The doctors have opined that the hospital does not have a proper gastro set up. Though it has been contended that the judgment does not reflect as to how the doctors opined that the hospital does not

have a proper gastro set up but the Court is not convinced with such submission. The treatment documents will suggest as to whether all procedures for conducting such difficult surgery were rightly followed or not.

16. Admittedly, the patient was treated for nearly a fortnight and the specialized doctors opined that it is a case of post surgical complication and the fate of the procedure could have been different had treatment been provided in a hospital with better set up. The situation could have been taken care of effectively had the proper gastro set up been there.

17. Un view of the above, the Court is not inclined to interfere with the impugned judgment.

18. The writ petition fails and is hereby dismissed.

19. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)