

Item No.9
01.07.2026
Court. No. 12
GB

FMA 934 of 2020
With
CAN 1 of 2020 (Old No.CAN 564 of 2020)
With
CAN 2 of 2020 (Old No. CAN 566 of 2020)

Narayan Hrudayalaya Limited & Anr.
VS
West Bengal Clinical Establishment
Regulatory Commission & Ors.

*Mr. Soumya Majumdar, Sr. Adv.,
Ms. Sonali Mukhopadhyay,
Ms. Sonal Agarwal*

...for the Appellants.

*Mr. Atarup Banerjee,
Mr. Rajdeep Pramanik,
Ms. Simika Roy*

...for the Respondent Nso.1 to 3..

1. This appeal arises out of an order dated December 2, 2019, passed in WPA 21787 of 2019. By the order impugned, the learned Judge dismissed the writ petition, inter alia, directing that compensation for an amount of Rs.5,00,000/-, should be paid to the parents of the deceased child, within a fortnight from the date of the order of His Lordship.
2. According to His Lordship, although a formal adjudication of the allegation of medical negligence had not been made, the fact that the Medical Superintendent of the hospital had offered a token compensation of Rs. 5,00,000/- would indicate that, the hospital wanted to settle the matter amicably.
3. The order dated July 4, 2019, recorded that, in the course of hearing Dr. Joydeep Bhattacharjee, Medical

Superintendent had offered compensation, in deference to the desire of the Commission.

4. The writ petitioners/appellants raised an objection to the direction of the Commission to pay Rs. 5,00,000 as compensation, on the ground that the Commission had not adjudicated the issue as to whether there was any medical negligence on the part of the hospital. His Lordship held that, when the hospital wanted to settle the matter by offering a token compensation, a further adjudication on the issues was not necessary.
5. According to His Lordship, the application filed by one Dr. Manjunath, for recall of the order dated July 4, 2019, was rightly rejected by the Commission. The recording of concession of Dr. Bhattacharjee, could only be challenged by Dr. Bhattacharjee, himself.
6. Mr. Majumdar, learned senior advocate for the appellants submits that, under Section 38 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017, an adjudication was mandatory. Compensation could not be directed as a matter of course. Unless the Commission arrived at a finding with regard to deficiency in the treatment and the service provided to the patient at the hospital, the hospital could not be saddled with any liability. Mr. Majumdar refers to page 126 of the application, to support his contention that, the compensation was made payable as it was the desire of the Commission.

7. Heard the parties. The first order of the Commission reflects that, after the matter was heard substantially, Dr. Bhattacharjee offered a token compensation.
8. What exactly transpired during the course of hearing, are within the knowledge of the Commission, Dr. Joydeep Bhattacharjee and the patient party. In the midst of hearing, in deference to the desire of the Commission, Dr. Bhattacharjee offered compensation of Rs.5,00,000/-. Although, the parents did not agree to the quantum at that stage, the Commission directed payment of Rs.5,00,000/- as per the suggestion of Dr. Bhattacharjee.
9. Later, Dr. Manjunath prayed for recall of the order on the ground that, there was no medical negligence in the treatment of the child. Inadvertently, the concession of Dr. Bhattacharjee was recorded, although the fact remained that Dr. Bhattacharjee did not offer any compensation.
10. The application was dismissed by the Commission on the ground that, Dr. Manjunath was not involved in the treatment of the patient. Dr. Manjunath was also not present at the hearing on July 4, 2019. Thus, it was not within the knowledge of Dr. Manjunath as to what had transpired during the hearing on July 4, 2019. We also find that, there is a recording that although a direct link between the negligence of the hospital and the patient's death could not be established, but the irregularities and deficiencies in service were available in the records.

Accordingly, on the concession of the representative of the clinical establishment, a sum of Rs.5,00,000/- was awarded as compensation.

11. The Commission directed payment of Rs.5,00,000/- without specifically commenting on the negligence, as the matter was sought to be resolved.
12. Under such circumstances, the learned Single Judge correctly held that, what actually transpired during the hearing was neither within the knowledge of Dr. Manjunath nor the writ petitioners/appellants. Moreover, it would be an absurd proposition of law to hold that, when a quasi-judicial proceeding was being disposed of amicably, a further adjudication on merits would be necessary. Although, we find reference to certain deficiencies in service, the Commission did well, in not pointing out those deficiencies, inasmuch as, as the hospital had gracefully extended an offer towards compensation for the incident and the loss of life.
13. Dr. Manjunath's application also indicates that the hospital charges had been waived. Although, the case of Dr. Manjunath was that, there had been no medical negligence, but what led to waiver of hospital charges, is not on record and we do not wish to comment on the issue.
14. Under such circumstances, we do not find any reason to interfere with the order of His Lordship.
15. The apprehension of Mr. Majumdar that, this order will be cited as a precedence in other matters, is not

accepted. An order passed on the basis of a concession, cannot have a binding effect on other matters.

16. The payment as directed, shall be made by an account payee cheque, which shall be sent by post to the recorded address of the parents. The parents shall also be informed over telephone about the order of this Bench, as they are not before us. The learned advocate on record for the Commission shall take immediate steps to ensure compliance of this order, by making the necessary communications.
17. Accordingly, the appeal and the connected application are disposed of.
18. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Smita Das De, J.)