

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 204 OF 2006

(From the order dated 14.6.2005 in SC Case No. 167/A/2002
of the State Commission, WEST BENGAL)

1. MATERNITY CLINIC
NURSING HOME AT PIPULPATI
CHINSURAH
P.O. HOOGLY
P.S. CHINSURAH
DIST – HOOGLY
WEST BENGAL

.. PETITIONER(S)

2.DR. SHYAMAL BARAN MONDAL
PIPULPATI
P.O. HOOGLY
P.S. CHINSURAH
DIST – HOOGLY
WEST BENGAL

VS.

1. MINOR DEBA SHOM
THROUGH HIS FATHER
SAIKAT SHOM

.. RESPONDENT(S)

2. SAIKAT SHOM
SON OF DULAL CHANDRA SHOM

BOTH R/O :

DOCTORS LANE
AKHANBAZAR
P.O. & P.S. CHINSURAH
DIST – HOOGLY
WEST BENGAL

BEFORE:

HON'BLE MR. JUSTICE B.N.P. SINGH, PRESIDING MEMBER

HON'BLE MR. S.K. NAIK, MEMBER

For the Petitioners: MR. PRABIR BASU, MS. RITA MUKHERJEE
& MR. SANJOY GHOSH, ADVOCATES

For the Respondents: MS. JAYSHREE SATPUTE, ADVOCATE
& RESPONDENTS IN PERSON

Dated 02.02.2010

-
ORDER
-

JUSTICE B.N.P. SINGH

Most pathetic and sad story it is of deceased Mahua Shom who shortly after delivering a child following forcep delivery carried out by Dr. S.B. Mondal, the Resident Medical Officer of the petitioner – Maternity Clinic while losing battle for her survival got defeated in her prime age of 26 years. The petitioner – Maternity Clinic belongs to wife of Dr. S.B. Mondal who was opp.party No. 1 before the District Forum. Dr. S.B. Mondal, Gynecologist and treating Physician respondent No. 2 herein was attached to the said Nursing Home as a Resident Medical Officer. As ill-luck would have hit deceased Mahua Shom who was carrying pregnancy came to be under treatment of respondent No. 1 in the said Maternity Clinic since 10.08.1996. She was admitted to the Nursing Home at about 8.30 AM on 25.08.1997 when she came for medical check-up, considering it a case of emergency though expected date of delivery was 13.09.1997. Doping was applied to her to raise labour. As no one came to attend her and she was left uncared for long hours since 8.30 AM, the Doctor and Nursing staff were duly informed. Be that as it may, the treating Doctor on his visit took Mahua to the labour room around

4.00PM and the baby was pulled out from the womb with the aid of forcep delivery. The baby borne several scar marks on the person which was very much visible. The mother complained severe pain in the abdomen after delivery and her belly puffed up. She was continuously sweating and blood pressure also came down considerably. Even though deceased faced crises, her condition deteriorating fastly, neither the attending Doctor nor the Nursing staff took pains to attend her even on getting informed till 10.00PM, even though the patient felt uneasiness, neither the treating Doctor got the course to blood transfusion or oxygen and treating the patient casually simply prescribed some medicines. Eventually, Mahua Shom that about 2.00 AM though a specialist was requisitioned who on his visit declared her clinically dead.

A consumer complaint came to be filed before the District Forum by minor Deba Shom. Both parties adduced evidence during the proceeding and the District Forum having ruled out medical negligence on the part of the petitioner dismissed complaint. State Commission on appeal being preferred by minor Deba Shom, however, reversed the finding of the District Forum holding both the petitioners deficient in service and guilty of medical negligence. The State Commission, accordingly, accepting appeal directed the treating Doctor S.B. Mondal to pay compensation of Rs. 4,00,000/- along with cost of Rs. 10,000/- to the appellant. Respondent No. 2, Nursing Home which was found answerable for negligence in providing medical services under the Clinical Establishment Act was saddled to pay compensation of Rs. 20,000/- to the petitioner.

Before the counsel could address the core issue to us, learned counsel for the petitioner contends that the finding recorded by the State Commission has to be struck down for the simple reason that though they were not given

due audience by the State Commission and the finding recorded by State Commission as such, ex-parte against them. He drew our attention to the Xerox copy of the orders of few dates of the State Commission to impress us that even though State Commission noticed that the petitioner was not represented, the proceeding commenced and was concluded in their absence, however, complaint, extract of the orders of the State Commission having not been filed by the petitioner. When the matter was taken up by State Commission for hearing on 08.04.2002, after admitting the appeal, the proceeding was adjourned to 02.07.2002 with a direction to issue notice against the respondents who are petitioners herein. No copy of the order of 02.07.2002 however, has been placed on record. When the matter came on 22.07.2002 was taken on 15.10.2003, when it was adjourned to 05.01.2004. No copy of order sheet of 05.01.2004 has been filed. Be that as it may, learned counsel for the respondent herein places before us a strong evidence suggesting knowledge of the petitioner about the pendency of the proceeding as notices issued against the respondent on 07.05.2002 indicating 02.07.2002 to be the date of hearing was duly received for both respondent Nos. 1 & 2 by none else but Respondent No. 1 as the copy of notice bears endorsement of Doctor Mondal on 19.06.2002 in token of the receipt of notice. The notices appear to have been sent through courier services, that too, it is submitted, bears endorsement in token of the receipt of the consignment, regard being had to the tacit evidence about receipt of notice by the petitioners as early as on 19.06.2002. The grievance raised by them for the State Commission having not given due audience to them was a merit less presumption. If the respondent, despite receipt of notices sent has not chosen to contest the proceeding, it was not open to them to raise a grievance

for their non-participation in the proceeding when the proceeding was concluded.

It seems that following death of Mahua Shom, on complaints, an enquiry team was constituted by the Government and CMOH, Hoogly on receipt of complaint of Mahua's death due to utter negligence and lack of medical attention. During enquiry, it was noticed by the agency of the enquiry that Dr. Mondal, respondent No. 1 was also attached to a Nursing Home at Kalna and association of respondent No. 1 with other Nursing Home does not leave the question unanswered about for the reasons Mahua remained unattended for hours together both preceding delivery of the child and also during post delivery period. Taking a strong exception to the negligence of the treating doctor, the State Commission held that the treating doctor was engaged more in money spinning business than providing medical services to ailing patients who were admitted in the Nursing Home. Even the enquiry team made adverse comment about the basic infrastructure of the Nursing Home and the negligence exhibited due to paucity of staff attached to the Maternity Centre, violating Clinical Establishment Act. The enquiry team on conclusion of enquiry made the following observations :-

“it could not unfortunately prove the death of Smt. Mahua Shom nevertheless, some suspicions are there as there are many irregularities in the Nursing Home and also the B.H.T. was not available”.

The Nursing Home evidences show was eventually closed down under orders of the Government. True, it is that the finding of the enquiry team did not record their views about the medical negligence on the part of Maternity

Clinic or the treating Doctor, raised a riddle of suspicion for negligence attributed to them. We are not oblivious that this may not be a primary evidence but this is of ancillary nature which reinforces the reasons for lack of clear and due attention for the patient admitted there.

Since the State Commission did not give much credence to the affidavit evidence of husband and in-laws of Smt. Mahua Shom as there may not be impartial appraisal of the situation for emotional reasons rightly applied the same ratio in case of evidence of Dr. S.B. Mondal, the treating doctor also as that too would be blurred by defensive statements. Even though Mahua Shom died in the clinic of the doctor, no autopsy over the dead body is shown to have been conducted. In such a situation, in case of unnatural death, it was expected that the police be requisitioned and Post-Mortem of the dead body should have been carried out in all fairness. Now the petitioners on this score wants to make a castle out of these loose ends in the said chapter of Mahua Shom, but evidence of Dr. S.C. Roy was not the last nail in the coffin. Dr. S.C. Roy was a Gynecologist who was examined during the pendency of the proceeding before the District Forum and his evidence in our view, strengthens the cause of the respondents. Dr. Roy was attached to Hospital with working experience of 30 years. The Doctor has visualized the state of health of the patient after it is subjected to forcep delivery, he speaks a lot about the likelihood of serious complications surfacing in the patient's condition during post delivery period, the doctor states that in case of forcep delivery there might be a chance of rupture of female organ and for the said rupture, the patient might bleed internally and externally, while external bleeding is visible, the internal bleeding would not be visible and in such cases, the patient's pulse rate would increase and blood pressure would fall

and the patient would sweat and her hands and legs would be cold. The patient may even die within half-an-hour to 3 days depending upon the flow of blood from the injury and the bleeding caused by forcep delivery. In such a situation, normalcy of the patient would not come back even if injection like Decadron and others are administered. Transmission of blood is necessary when the blood pressure and oxygen is to be supplied when there is bleeding trouble. Shortly, after forcep delivery, the patient complained of severe pain in the abdomen, her belly had puffed up, she was continuously sweating and her blood pressure too had considerably fell down. These symptoms which surfaced with the patient were quite identical with the symptoms identified by Dr. Roy which usually happens during forcep delivery on account of internal injury caused in the wake of forced delivery when the infant is pulled out from the womb with the aid of instrument.

Though we are not oblivious of the loose ends in case of respondent about autopsy of dead-body of Mahua Shom getting not carried out even though she died in the hospital of respondent and bed-head ticket too, not reflecting the status of crisis which the deceased faced in last hours of her life, yet we feel that the circumstances which have surfaced and are enforced by the finding of Dr. S.C. Roy, Gynecologist who was also put to cross-examination by respondent, speak a volume about the status of ailment of the deceased preceding her death and also negligence exhibited by treating Doctor in attending to her ailment when she was in crisis and in our view, the dictum *res ipsa loquitor* would apply leaving no room to negate negligence attributed to the treating Doctor for want of death. In case of **Dr. T. Vani Devi & Ors. Vs. Tugutla Lakshmi Narasaiah**, National Commission in case of death of the mother, shortly after delivering a child, affirmed the finding of

State Commission holding treating Doctor to be negligent in service and awarded adequate compensation. In case of **Savita Garg Vs. Director, National Heart Institute – (2008) 8 SCC 56**, the Hon'ble Apex Court held that after the complainant has successfully discharged the initial burden that the hospital – clinic doctor was negligent and that as a result of such negligence, the patient died, in that case, the burden lies on the hospital and the Doctor concerned who treated the patient to show that there was no negligence involved in the treatment. Having given our bestowed consideration to the contentions raised, we are of considered view that finding of State Commission holding the doctor and Nursing Home to be deficient in service cannot be said to be against weight of mass of evidence put on the record. However, compensation of Rs. 4,00,000/- awarded by State Commission appears to be on higher side. True it is, that loss of human life cannot be monetarily evaluated but efforts are made simply to mitigate the suffering and injuries caused to the victim. Regard being had to the attending circumstances of the case, we, accordingly, reduce compensation of Rs. 4,00,000/- to Rs. 3,00,000/- and modify the order of State Commission, accordingly directing petitioner No. 2 – Dr. S.B. Mondal to pay Rs. 3,00,000/- along-with cost of Rs. 10,000/- to the respondent within two months. Award of State Commission against petitioner No. 1 is, however, left unaltered. Resultantly, revision petition succeeds with the aforesaid modification in the order, with no order as to cost.

.....J
(B.N.P. SINGH)
 PRESIDING MEMBER

.....
(S.K. NAIK)
 MEMBER

Dd/12