NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

ORIGINAL PETITION NO. 90 OF 2002

Pravat Kumar Mukherjee … Complainant

Vs.`

Ruby General Hsopital & Ors. … Opposite Parties

BEFORE:

HON'BLE MR. JUSTICE M.B.SHAH, PRESIDENT
DR. P.D.SHENOY, MEMBER.

For the Complainant : Ms. Maninder Acharya, Advocate
(Amicu Curiae)

For the Opposite Parties : Mr. Ashok Desai & Mr. A.N. Haksar,
Senior Advocates with
Mr. Raja Chatterjee, Ms. Deepa Somasekhar,
Mr. Sachin Das,Mr. Narain, Advocates.

Dated 25th April, 2005

O R D E R

M.B.SHAH, J. PRESIDENT

Can Doctors insist and wait for money (fees) when death is knocking the doors of the patient? Obvious answer is recovery of fee can wait - but not the death – nor the treatment for trying to save the life.

The case involves unfortunate death of a young boy, Shri Sumanta Mukherjee, a student of second year B.Tech., Electrical Engineering, at Netaji Subhash Chandra Bose Engineering College, on 14.1.2001 who was injured in an accident at about 8.00 a.m. in which a bus of the Calcutta Tramway Corporation dashed with the motor cycle driven by the deceased. The deceased was brought to the Ruby General Hospital, Kolkata, which was close to the place of accident.

The sole question that arises for our consideration is whether the doctors in the hospital were deficient in discharge of their duties in not continuing with the treatment after having started giving some treatment to the deceased. It is contended that treatment was not

continued because of failure on the part of the persons who brought him to the hospital to deposit Rs.15,000/-. This resulted in denial of treatment and consequential death of the young boy.

Brief Facts:

Complainants are the parents of the deceased boy. They approached this Commission for compensation and adequate relief. It is stated that because of the death of their son, it has changed their lives in irreversible manner, i.e. the mother of the deceased is under constant psychiatric treatment, while the father who is a doctor doing research in medicine has abandoned his medical research in which he was actively involved before the death of his son and has suffered immense blow to his profession.

In brief it is their say that their son Sumanta Mukherjee, aged 20, a student of 2nd Year Electrical Engineering met with an accident on 14th January, 2001 at 8.10 a.m. while he was going to attend his tuition on Motor Cycle. He was knocked down from behind by a Bus of Calcutta Tram Company of Route No.14/1 (bearing No.WB 04 A 0106). Before hitting Sumanta, the bus had already hit one cyclist Vishwajeet Sardar and Sumanta was the second victim of the bus. Since the said cyclist was from the humble background, he was taken to National Calcutta Medical College & Hospital which is a Government Hospital.

Sumanta who was conscious after the accident was taken to the respondent No.1 Hospital, which was around 1 km. from the site of accident by a crowd of people which had gathered there after the accident, one of them being Mr. Sunil Saha, P.W.3 in the present case. The deceased was insured under the Mediclaim policy issued by the New India Assurance Company Ltd. for a sum of Rs.65,000/-. At the time of reaching the Hospital, deceased was conscious and showed the mediclaim certificate which he was carrying in his wallet to respondent No.3 to 5. He promised them that the charges for the treatment would be paid and that they should start the treatment. Acting on the promise the respondents Hospital started the treatment in its Emergency Room by giving moist oxygen, starting suction and by administering injection deryphyllime, injection lycotin and tetnus toxoid. The respondent No.3 to 5 however after starting the treatment began to insist upon the immediate payment of Rs.15,000/- and threatened to discontinue the same if it was not immediately deposited. Mr. Sunil Saha, (P.W. 3) various other persons present in the crowd as well as Mr. Bhabatosh Roy (P.W. 4) requested the respondent Nos.3 to 5 to continue treating Sumanta and assured them that the payment would be made as soon as they were able to get in touch with the parents of Sumanta. The crowd present there also offered to pay Rs.2,000/- and to hand over the motorcycle to the respondent No.3 to 5. The mediclaim certificate issued by the Insurance Company was also showed again and again to the respondents by the members of the crowd and Mr. Sunil Saha. The respondents, however remained adamant about the immediate deposit of Rs.15,000/- and showing the gross deficiency in service in utter violation of medical ethics. They discontinued the treatment after continuing it for around 45 minutes. Mr. Sunil Saha and other persons from the crowd present there were

then forced to take late Sumanta to National Calcutta Medical College and Hospital which is about 7 to 8 Kms. from the Ruby General Hospital. Sumanta, however, died on the way and was declared brought dead at the said hospital at 9.10 a.m.

The complaint, therefore, has been filed against the respondents i.e. Respondent No.1 Hospital, Respondent No.2, Sr. Manager (Administration), Respondent No.3 Front Office Assistant of the Hospital, Respondent No.4 Emergency Medical Officer, i.e. Doctor and Respondent No.5 Emergency Medical Assistant (para medical staff) claiming compensation of Rs.1,34,60,000/- for the damages caused to the complainants due to deficiency in service on behalf of the respondents No.1 to 5.

Submissions by Respondents:

On behalf of the Respondent it is submitted that though it is a commercial hospital it also has charitable beds in the Mother Teresa Ward where beds are available for admitting patients at nominal charges of Rs.150/- per bed. The prices have not been increased from 1996 till date. However, bed charges for other categories have nearly doubled in the last nine years. The Hospital also does benevolent activities to the community at large by conducting free medical camps. At the interiors of Suderbans, free medical camp was organised where 40 specialist doctors were taken, patients were treated and free medicines were distributed. The Central Coordinate Committee of Gold Green also expressed their gratefulness to Ruby Hospital for organizing free medical checkup camp over there. Padmapurkar Nagrik Committee also expressed their gratefulness to Ruby Hospital for conducting free medical checkup camps, where over 500 patients were treated by Specialist Doctors.

On merits, it is submitted by the Respondents that the impact of the accident was fatal in its effect. The patient was brought to the emergency department of the hospital by a non-Bengali passer-by and immediate first aid medical treatment was started at the emergency department by the medical officer on duty without any question of consideration.

It is the case of the Hospital and the other Respondents that the persons accompanying the patient had declined to sign the usual admission form and had taken the patient away for treatment to a Government Hospital within 4 to 5 minutes of starting of treatment which was started without the procedural formalities for admission.

.**A**. In background of this bare facts preliminary contention raised is - whether the father of the deceased or the deceased can be regarded as a consumer?

It is contended by the learned Senior Counsel Mr. Ashok Desai **that under the Consumer Protection Act, 1986, there is no concept of imposing a consumer on a service provider. There is no law which makes the person injured a consumer of the hospital itself**

within the meaning of the Consumer Protection Act, 1986. A person can be a consumer only by hiring or availing of services for consideration as set out in Section 2(1)(d)(ii) of the Act. He therefore, contended that admittedly, in the present case, no consideration was fixed and no amount was received from the Complainant, and, therefore, there is no relationship between the deceased and or the Complainant with the hospital or doctors and therefore the deceased or his father is not a consumer covered under the Consumer Protection Act, 1986. Hence, this complaint is not maintainable.

At first blush the contention is much more attractive having force but has no substance in the context of the law and the duties of the Doctors. No doubt, in a society where there is cent per cent commercialisation of each and every walk of the life this submission is cent per cent valid. But, fortunately, we have not reached the stage of 100% commercialisation. We still believe in the ethics of noble profession, duties to the society, living animals (Art.51-A of the Constitution of India) and the law on the subject is also settled.

For appreciating this preliminary contention we would first refer to Sec.2(1)(d)(ii).

2(1)(d) "Consumer" means any person who

…..

hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or **under any system of deferred payment and includes any beneficiary of such services** other than the person who hires or **avails of the services** for **consideration paid or promised**, or partly paid and partly promised, or under any system of deferred payment, **when such services are availed** of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose."

(a) This section has come up for interpretation in numerous cases. Important case is in the case of Indian Medical Association Vs. V.P.Shantha & Ors.(1995) 6 SCC 651, wherein the Indian Medical Association raised the contention that services rendered by the medical practitioner would not be covered by the provisions of the Consumer Protection Act, 1986. In that case by judgment in Cosmopolitan Hospitals v. Vasantha P. Nair, the National Commission held that the activity of providing medical assistance for payment carried on by hospitals and members of the medical profession falls within the scope of the expression 'service' as defined in Section 2 (1)(o) of the Act and that in the event of any deficiency in the performance of such service, the aggrieved party can invoke the remedies provided under the Act by filing a complaint before the Consumer Forum having jurisdiction. It was also held that the legal representatives of the deceased patients who were undergoing treatment in the hospital are 'consumers' under the Act and are competent to maintain the complaint. Against the said judgment, civil appeals were filed before the Apex Court. It was contended that medical practitioners are not covered by the provisions of the Consumer Protection Act, 1986. The Court negatived the said contention and

relevant discussion in that is as under:
"27. Shri Harish Salve, appearing for the Indian Medical Association, has urged that having regard to the expression "which is made available to potential users" contained in Section 2(1)(*o*) of the Act, medical practitioners are not contemplated by Parliament to be covered within the provisions of the Act. **He has urged that the said expression is indicative of the kind of service the law contemplates, namely, service of an institutional type which is really a commercial enterprise and open and available to all who seek to avail thereof**. In this context, reliance has also been placed on the word 'hires' in sub-clause (*ii*) of the definition of 'consumer' contained in Section 2(1)(*d*) of the Act. We are unable to uphold this contention. The word 'hires' in Section 2(1)(*d*)(*ii*) has been used in the same sense as "avails of" as would be evident from the words "when such services are availed of" in the latter part of Section 2(1)(*d*)(*ii*). By inserting the words "or avails of" after the word 'hires' in Section 2(1)(*d*)(*ii*) by the Amendment Act of 1993, Parliament has clearly indicated that the word 'hires' has been used in the same sense as "avails of". The said amendment only clarifies what was implicit earlier. **The word 'use' also means "to avail oneself of**". (See: *Black's Law Dictionary*, 6th Edn., at p.1541.) The word 'user' in the expression "which is made available to potential users" in the definition of 'service' in Section 2(1)(*o*) has to be construed having regard to the definition of **'consumer' in Section 2(1)(*d*)(*ii*) and, if so construed, it means "availing of services".** From the use of the words "potential users" it cannot, therefore, be inferred that the services rendered by medical practitioners are not contemplated by Parliament to be covered within the expression 'service' as contained in Section 2(1)(*o*).

In the said case the Court has specified 'in which set of circumstance services rendered by the medical practitioner would not be considered to be covered by the provisions contained in Section 2(1)(o) of the Act; the payment of token amount for registration purposes only would not alter the provision in respect of such doctors and hospitals. For the second category, there could not be any dispute and it was held that it would clearly fall within the ambit of Section 2(1)(o) of the Act. For the third category, the Court observed thus:
"The third category of doctors and hospitals do provide free service to some of the patients belonging to the poor class but the bulk of the service is rendered to the patients on payment basis. The expenses incurred for providing free service are met out of the income from the service rendered to the paying patients. The service rendered by such doctors and hospitals to paying patients undoubtedly falls within the ambit of Section 2(1)(o) of the Act."

Thereafter, the Court pertinently held thus:

"All persons who avail of the services by doctors and hospitals in category (iii) are required to be treated on the same footing irrespective of the fact that some of them pay for the service and others avail of the same free of charge. Most of the doctors and hospitals work on commercial lines and the expenses incurred for providing services free of charge to patients who are not in a

position to bear the charges are met out of the income earned by such doctors and hospitals from services rendered to paying patients. **The government hospitals may not be commercial in that sense but on the over all consideration of the objectives and the scheme of the Act, it would not be possible to treat the government hospitals differently**. **We are of the view that in such a situation, the persons belonging to "poor class" who are provided services free of charge are the beneficiaries of the service which is hired or availed of by the "paying class"**. We are, therefore, of the opinion that service rendered by the doctors and hospitals falling in the category (iii) irrespective of the fact that part of the service is rendered free of charge, would nevertheless fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act. We are further of the view that persons who are rendered free service are the 'beneficiaries' and as such come within the definition of 'consumer' under Section 2(1)(d) of the Act".

In our view status of "emergency or critically ill patient" would be same as "persons belonging to Poor Class". Both are not in a position to pay – may be for separate reasons.
The relevant conclusions (para 55) are as under:
(10). Service rendered at a government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing of such services would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act, **irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be 'service' and the recipient a 'consumer' under the Act**."

Keeping the aforesaid principles and the facts of the present case in mind, admittedly, apart from registration fee, Respondent institute charges various amounts such as Hospital charges, Diagnostic charges etc. from some patients and to some patients free of charge treatment is given. Hence, in case where service is rendered free of cost to some patients, it would be service within the ambit of expression 'service' as defined in Sec. 2(1)(o) of the Act. This would be irrespective of the fact that service rendered free of charge to persons who do not pay for such services. **Free services would also be 'services' and the recipient would be a consumer under the Act**. "Emergency or critically ill" persons, are the beneficiaries of the service which is hired or availed by the paying class.

In the present case, admittedly, the deceased availed for the services of the hospital and the Doctors. Doctors started giving treatment to the deceased because of emergency. That itself is availing of the services – **may be free of cost or promised deferred payment**.

The reasons for giving the treatment could be – (a) on the promise of deferred payment, or (b) on the assumption of the duty as a member of noble profession to discharge such duties in such emergency cases.

(b) The duty of the noble profession is crystallised by various judgments. We would refer to the decision rendered by the Apex Court in Pt. Parmanand Katara Vs. Union of India & Ors. AIR 1989 SC 2039. In that case also it was alleged that a scooterist was knocked down by a speeding car. Seeing the profusely bleeding scooterist, a person who was on the road picked up the injured and took him to the nearest hospital. The doctors refused to attend on the injured and told the man that he should take the patient to a named different hospital located some 20 kilometers away authorised to handle medico legal cases. The Samaritan carried the victim. But, before he reached the hospital the patient succumbed to his injuries. In that set of circumstances in a petition under Article 32 the Court pertinently observed that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. Therefore, injured citizen brought for medical treatment, should be instantaneously given medical aid to preserve life. For this purpose, reference was made to Clauses 10 and 13 of the Code of Medical Ethics drawn up with the approval of the Central Government under Section 33 of the Medical Council Act which are as under:

"10. *Obligations to the sick*: Though a physician is not bound to treat each and every one asking **his services except in emergencies for the sake of humanity** and the noble traditions of the profession, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he incurs in the discharge of his ministrations, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavour to add to the comfort of the sick by making his visits at the hour indicated to the patients.

13. *The patient must not be neglected*: A physician is free to choose whom he will serve. He should, however, respond to **any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving notice to the patient, his relatives** or his responsible friends sufficiently long in advance of his withdrawal to allow them to secure another medical attendant. No provisionally or fully registered medical practitioner shall wilfully commit an act of negligence that may deprive his patient or patients from necessary medical care."

In the concurring judgment, Ojha, J. has observed in pr.14 as under:

"14. It could not be forgotten that seeing an injured man in a miserable condition the human instinct of every citizen moves him to rush for help and do all that can be done to save the life. It could not be disputed that in spite of development economical, political and cultural still citizens are human beings and all the more when a man in such a miserable state hanging between life and death reaches the medical practitioner either in a hospital (run or managed by the State) public

authority or a private person or a medical professional doing only private practice he is always called upon to rush to help such an injured person and to do all that is within his power to save life. **So far as this duty of a medical professional is concerned its duty coupled with human instinct, it needs no decision nor any code of ethics nor any rule or law**."

This aspect is also highlighted by Kerala High Court (K.S.Paripoornan and K.T. Thomas, JJ.) in Dr. T.T.Thomas Vs. Smt. Elisa & Ors. AIR 1987 Ker. 52, in the following terms: "Devaluation of standards in professional ethics is a dangerous trend. Its proliferation in medical professional is more calamitous than in other professional or occupational areas. "There can be few, it any, professional other than that of medicine about which it is possible to fashion a television series entitled "**Your Life in Their Hands**'- (Mason and McCall Smith – Law and Medical Ethics). Failure to make a proper diagnosis sometimes may be the consequence of human error. **But when diagnosis is correctly made, the imperative duty of the medical man to take adequate and prompt curative steps need not be over-emphasised, for, any** inertia on his side is at his risk as to all costs and consequence. If the allegations in this case are true, this would fall within the amplitude of the above proposition."
On evidence, in para 5, the Court observed thus:

"In the written statement, the appellant admitted that he examined the patient on the 11th itself and diagnosed his disease as 'perforated appendix with peritonitis" and that he advised immediate operation. But the main contention of the appellant, in his written statement is that no surgery was done on the patient on 11-3-1974 because of the reluctance of the patient to undergo a surgery saying that "he had similar attacks before and he used to get relief with injections and other medicine. "So, according to the appellant, other measure were taken to ameliorate the condition of the patient which grew worse on the next, day when he was not in a operable condition, though the patient was then willing to be operated upon. **The appellant denied, having received any amount from the plaintiffs**. He also denied that he was absent in the hospital and that he went to the General Hospital only after the death of the patient on 13-3-1974. He emphatically denied the allegation that the death of the patient was due to his negligence."
With regard to consent by the parties, in paras 11, 12 and 13 the Court held thus:
"11. The appellant has advanced a case the he could not perform the operation on 11-3-1974 as the patient did not gave consent to it. About this consent aspect, an understanding about its requirement is of help in this case. Why should a doctor insist on consent from his patient for the course of treatment to be adopted by him? **Consent from the patient is evidently not for the safety of the patient, but for the projection of the physician or the surgeon**, as the case may be, every surgery, whether minor or major, is fraught with some degree of hazard or risk which varies in accordance – with the seriousness of the disease. If a patient collapses during the course of a surgery or during the course of a treatment, law gives protection to the medical man, provided, **he establishes that the risky** step was adopted with the consent, express of implied,

from the patient. In fact it is a defence available to the doctor as envisaged in S.88 of the Penal Code. The consent factor may be important very often in cases of selective operations which may not be imminently necessary to save the patient's life. **But there can be instances where a surgeon is not expected to say that. "I did not operate him because, I did not get his consent". Such cases very often include emergency operations where a doctor cannot wait for the consent of his patient or where the patient is not to give a conscious answer regarding consent**. Even if he is in a fit state of mind to give a voluntary answer, the surgeon has a duty to inform him of the dangers ahead or the risks involved by going without an operation at the earliest. In this context, we find it advantageous to refer to a passage from "Law and Medical Ethics" by Mason and McCall Smith (page 113 of the 1983 edition) under the sub-title "is consent always necessary? The relevant passage is quoted below:

"As a general rule, medical treatment, even of a minor nature, should not proceed unless the doctor has first obtained the patient's consent. This consent may be expressed or it may by implied, as it is when the patient present himself to the doctor for examination and acquiesces in the suggested routine. The principle of requiring consent applies in the overwhelming majority of cases, but there are certain circumstance in which a doctor may be entitled to proceed without this consent- firstly, when the patient's balance of mind is disturbed, secondly. When the patient is incapable of giving consent by reason of unconsciousness; and, finally when the patient is a minor."

(P)12. Very often, poor and illiterate patients, and some times even the educated and the so-called sophisticated members of the society are averse to surgery, but most of them would agree to it when they are told about the grave consequences otherwise.

(P)13. When a surgeon or medical man advances a plea that the patient did not give his consent for the surgery or the course of treatment advised by him, the burden is on him prove that the non-administration of the treatment was on account of the refusal of the patient to give consent thereto. This is especially so in a case where the patient is not alive to give evidence. Consent is implicit in the case of a patient who submits to the doctor and the absence of consent must be made out by the person alleging it. "In most instances, the consent of a patient is implied." (Mayne's "Criminal Law of India" by S.Swaminathan 4th Edn. – at page 198). A surgeon who failed to perform an emergency operation must prove with satisfactory evidence that the patient refused to undergo the operation, not only at the initial stage, but even after the patient was informed about the dangerous consequences of not undergoing the operation.

Similarly in a case where, plaintiff, a women, aged 36, suffering from serious mental disability, had been, a voluntary in-patient at a mental hospital controlled by the health authority in England, she had formed a sexual relationship with a male patient.

There was medical evidence that, from a psychiatric point of view, it would be disastrous for her to become pregnant and the medical staff incharge of the hospital decided that the best course was for her to be sterilised. In that circumstances her mother sought a declaration that the absence of her consent would not make sterilisation unlawful act. In that context in F v. West Berkshire HA - [1989] 2 All ER 545 House of Lords in Appeal observed:
"The issues canvassed in argument before your Lordships revealed the paucity of clearly defined principles in the common law which may be applied to determine the lawfulness of medical or surgical treatment given to a patient who for any reason, temporary or permanent, lacks the capacity to give or to communicate consent to that treatment. It seems to me to be axiomatic that treatment which is necessary to preserve the life, health or well-being of the patient may lawfully be given without consent. But, if a rigid criterion of necessity were to be applied to determine what is and what is not lawful in the treatment of the unconscious and the incompetent, many of those unfortunate enough to be deprived of the capacity to make or communicate rational decisions by accident, illness or unsoundness of mind might be deprived of treatment which it would be entirely beneficial for them to receive.

Moreover, it seems to me of first importance that the common law should be readily intelligible to and applicable by all those who undertake the care of persons lacking the capacity to consent to treatment. It would be intolerable for members of the medical, nursing and other profession devoted to the care of the sick that, in caring for those lacking the capacity to consent to treatment, they should be put in the dilemma that, if they administer the treatment which they believe to be in the patient's best interests, acting with due skill and care, they run the risk of being held guilty of trespass to the person, but, if they withhold that treatment, they may be in breach of a duty of care owed to the patient…."

Considering the aforesaid law, it is apparent that:
emergency treatment was required to be given to the deceased who was brought in a seriously injured condition;
there was no question of waiting for the consent of the patient or a passer by who brought the patient to the hospital, and was not necessary to wait for consent to be given for treatment;

There is nothing on record to suggest that the Doctor has informed the patient or the relatives or the person who has brought him to the hospital with regard to dangers ahead or the risk involved by going without the operation/treatment at the earliest.

Consent is implicit in such cases when patient is brought to the hospital for treatment, and a surgeon who fails to perform an emergency operation must prove that the patient refused to undergo the operation not only at the initial stage but even after the patient was informed about

the dangerous consequences of not undergoing the operation.

This is not there in the present case.

Hence, deficiency in service on the part of the respondents is apparent. Respondents have admitted that the hospital has charitable beds in Mother Theresa Charitable Ward and that the hospital does benevolent activities to the community at large or conducting free medical camps. The other charitable activities are mentioned in the submissions and for that documentary evidence is produced on record. If that was so, there was no necessity of withdrawing the medical aid which was started by the doctors. It cannot be disputed that there was emergency. It was for the doctors to try to save the life of a young boy. Instantaneous medical help might have preserved the life. May be that in an ordinary course Physician or a surgeon is not bound to treat each and every patient, requiring his service. But, in a critical case where the close relative of the patient is not available it becomes the duty of such physician or surgeon to be mindful of the high character of his mission and the responsibility in the discharge of his duties. As held above, so far this as duty of medical profession is concerned, it is coupled with human instinct and needs no decision nor any code of ethics nor any rule of law. In such cases the life is in the hands of a Doctor. Waiting for consent of the patient or a passer-by who brought the patient in the hospital is nothing but absurd and is apparent failure of duty on the part of the doctors who were discharging their duties at the said time. In such cases consent is not inevitable.

Further, this obligation to the society and the duty is admitted by Opposite Party which would be clear from the letter dated 4.6.2002 written by the Managing Director of the Ruby General Hospital

to the Principal Secretary, Health and Family Welfare Department for renewal of licence to run the hospital. Nodoubt, this was in connection with the departmental inquiry held against the Complainant which we would refer to hereafter. In the said letter the it is stated that:

"According to your above communication conveyed in memo No.HAD/6R/16/A3293 dated 30th May, 2002 there has been a complaint against Ruby General Hospital that one critically ill patient brought to Ruby General Hospital's Emergency Department was allegedly refused admission on monetary consideration.

In the complaint referred to in your memo under reference, we had stated our position through written communications to the Health Department and subsequently met the Hon'ble Minister In-Charge (Health & Family Welfare) today in this regard.

I wish to reiterate that patients who are brought to our emergency department are immediately rendered all possible medical treatment and thereafter, if necessary, promptly admitted in our hospital. I also wish to emphasise that lack of advance monetary deposit has never been and will never be a factor for refusal of admission to critically ill patients**.**

I undertake **to assure you that Ruby will continue to adhere to this policy of attending to and admitting critically ill patients when they are brought to the hospital's emergency department, irrespective of whether or not any advance monetary deposit is paid.**

In view of the above, I would request you to please renew the above mentioned Licences for one year with immediate effect".

In addition to the above, in the written version filed by the Respondents while dealing with the allegations with regard to treatment to the deceased, it has been stated as under:
an unknown patient (now discovered to be the late Sumanta Mukherjee) was brought to the Hospital of the Respondent No.1 by one non-Bengali pedestrian on January 14, 2001 at approximately 8.00 a.m.;
the late Sumanta Mukherjee was semi-conscious **and was bleeding from his mouth and nose. He was disoriented and could not speak anything;**
features of head injury were present on late Sumanta Mukherjee;
in the above circumstances, myself and my assistant, Santanu Bhattacherjee, immediately leaving everything else aside made ourselves available for treatment of the late Sumanta Mukherjee;
both oral and nasal bleeding of the late Sumanta Mukherjee were sucked through sucker machine, and moist oxygen inhalation for the late Sumanta Mukherjee was resorted to. Injection Driphylline, injection Lycortin and injection Teteanus Toxoid were administered to the late Sumanta Mukherjee and I advised that the patient be admitted immediately in the Intensive Therapy **Unit under the Neuro Surgery Department of the hospital;**
following my advise, the non-Bengali pedestrian, who had brought the late Sumanta Mukherjee went to the reception/front office of the Hospital for complying with admission procedures **but forthwith returned therefrom and informed us that he would not permit the late Sumanta Mukherjee to be treated in the hospital of the Respondent No.1 but that he would admit him in any Government Hospital for better treatment;**
the late Sumanta Mukherjee was immediately thereafter put on to a taxi and removed from the hospital;
the whole incident took place within a span of approximately 4 minutes and even before transfusion of intravenous fluid, the late Sumanta Mukherjee was taken away, from the hospital; and

none of the staff of the hospital, who were present including myself and my assistant could make any ticket or entry in the records relating to such matter within such a short span of time and as every moment was vital for the benefit of late Sumanta Mukherjee, the late Sumanta Mukherjee left the hospital without any obstruction.

In the aforesaid written version there are admissions to the effect that when the deceased was brought in the hospital he was semi-conscious; he was given medical treatment through succour machine moist oxygen inhlation, injections were administered, and, thereafter, advice was given that patient be admitted immediately in the intensive therapy unit; non-Bengali pedestrian who had brought the deceased went to reception/ Front Office for complying with the admission procedure.

This leaves no doubt that the hospital and the doctors started emergency treatment to the deceased in discharge of their duties, may be on the promised deferred consideration by semi-conscious deceased or others. In any case, the deceased availed **of the services from a hospital where consideration is taken from some patients and free of cost treatment is given to others.**

Further, for deficiency of service the concept of duty for medical practitioner is required to be reiterated. Duty may arise because the person is a member of the noble profession In this context, it is worthwhile to refer the observations of the Apex Court, in Poonam Verma Vs. Ashwin Patel & Ors., (1996) 4 SCC 332, in the following terms:

"14. Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do. (See: *Blyth* v. *Birmingham Waterworks Co.*[2]; *Bridges* v. *Directors of North London Rly.*[3]; *Governor General in Council* v. *Saliman*[4]; *Winfield and Jolowicz on Tort.*)

15. The definition involves the following constituents:

(1) a legal duty to exercise due care;

(2) breach of the duty; and

consequential damages.

16. The breach of duty may be occasioned either by not doing something which a reasonable man, under a given set of circumstances would do, or, by doing some act which a reasonable prudent man would not do.

17. So far as persons engaged in the medical profession are concerned, it may be stated that every person who enters into the profession, undertakes to bring to the exercise of it, a reasonable degree of care and skill. It is true that a doctor or a surgeon does not undertake that he will

positively cure a patient nor does he undertake to use the highest possible degree of skill, as there may be persons more learned and skilled than himself, but he definitely undertakes to use a fair, reasonable and competent degree of skill."

The Court also referred to an earlier decision in the case of **Pt. Parmanand Katara (Supra) Vs. Union of India & Ors. and it was observed that in the said case the Court has emphasised the need for rendering immediate medical aid to injured persons to preserve life and the obligation of the State as well as Doctors in that regard**. From the aforesaid set of circumstances, it can be held that doctors on duty failed to do what a prudent and reasonable doctor is expected to do. Hence, there was a duty and thereby deficiency in service.

B. Whether the M.A.C.T. case would bar complaint under the C.P. Act?

The other preliminary objection raised by learned Senior Counsel, Mr. Ashok Desai and Mr. Haksar is with regard to maintainability of this complaint on the ground that Complainant had already approached a tribunal under the Motor Vehicles Act, 1988. It is also pointed out that in the M.A.C.T the Complainant has received the amount of compensation and without disclosing the said fact he has approached this Commission under the Consumer Protection Act, 1986. Therefore, the complaint is not maintainable.

In our view, this submission also requires to be rejected because the two causes are different and are required to be decided by separate Tribunals/Forums having limited jurisdictions.
the cause of action before the MACT was, with regard to rash and negligent driving by the Driver of the other vehicle by which accident was caused; and
the cause of action against the Doctors or the hospital is for deficiency in rendering service – Emergency treatment by the hospital and the doctors.
Both causes are separate and distinct.

Further, it was not possible for the Complainant to maintain the complaint for the deficiency in service by the doctors before the Motor Accident Claims Tribunal. Similarly, before the Consumer Forum, the grievance with regard to the accident and driver's liability or the vehicle owner's liability cannot be dealt with or decided.

Merits:

Apart from the aforesaid preliminary submissions learned Senior Counsel Mr. Desai and Mr.Haskar for the Respondents submitted that the evidence produced on behalf of the of the Respondents is not reliable. The Complainant was not present at the relevant time in the

hospital. It is their contention that at the time when the deceased was brought to the hospital he was unconscious and there was no question of showing any mediclaim policy or promise by him for payment of fees. Payment of fees was not insisted by the Doctors but the passer-by who brought the deceased stated that the deceased was required to be removed to Government Hospital. They further submitted that after the inquiry, which was held by the Government of West Bengal, the Government has finally renewed the licence, and therefore, that inquiry cannot be the basis for drawing any adverse inference against the hospital or the Doctors. They have also contended that the evidence of Dr.Amalendu Chatterjee, Ex-Professor and Head of Department of Medicines of ID & BJ Hospital, Beliagphata, Kolkata, was not reliable.

As against this, learned Counsel for the Complainant strenuously pointed out all the relevant evidence and submitted that there is no reason to disbelieve the evidence of independent witness.

(i). For appreciating the contentions, firstly we would refer to the evidence of Dr. Amalendu Chatterjee (PW.5, Vol.9), wherein he has inter alia, stated as under:
"…….If a fatally injured patient having internal bleeding is put on oxygen and treatment by suction started and the same continues for sometime and thereafter if it is suddenly discontinued by removing the oxygen and taking the patient off suction, it can hasten his death.

That it is even worse than not starting the treatment at all and permitting the patient to be shifted taken to another Hospital immediately. If without starting the treatment a critically injured patient suffering from internal injury is immediately taken to the Hospital where the treatment is to be continued it does not only save the precious time required to transport him to the proper place of treatment but may also increase his chance of survival."

From the aforesaid evidence of an expert doctor it has been pointed out that by discontinuing treatment the Respondents have hastened the death of the patient. If the hospital was not prepared to give the treatment to the patient for want of money, it ought not to have started the treatment.

However, learned Counsel for the Respondent submitted that the aforesaid opinion is without examining the post-mortem report or the nature of the injuries suffered by the deceased, and the opinion does not state as to what is meant by fatal injury, nor this can be the basis for holding that discontinuance of any treatment by the Ruby was the cause of death of Samanta.

In our view, we are not holding that the cause of death of Samanta is discontinuance of the treatment. But, at the same time, discontinuance of treatment in such critical cases affects adversely and that itself is deficiency in service.

Departmental Inquiry Reports:

(ii). Next important evidence is the **report of the inquiry** held against the hospital by the

State of West Bengal for the lapses in not giving treatment to the deceased.

The first inquiry was held on 12.4.2001 on the basis of the complaint lodged by Shri Roopchand Pal, M.P. against the Ruby General Hospital regarding refusal of admission and treatment of accidental patient Shri Sumanta Mukhopadhyay on 14.1.2001 at 8.10 a.m. The inquiry was conducted by a committee of three eminent Doctors of the West Bengal wherein the statements of Doctors who were present during the incident in the Ruby General Hospital were recorded. After referring to the statement of Kanti Kumar Datta, Front Office Assistant, in the report it was observed as under:

"As per this statement the patient was given preliminary treatment in the emergency and the party accompanying the patient was asked to make necessary arrangements for admission of the patient in the ITU. Subsequently, the patient party refused admission and the patient was shifted elsewhere by the party. The whole incident occurred within 5/6 minutes.

Observation:

The name of the patient was not entered into the register;

The management of Ruby General Hospital could have admitted the patient taking into consideration the seriousness of the nature of accidents;

It is clear from the views of front office assistant that the official procedures and the initial charges for admission prevented the party accompanying the patient to admit the patient in Ruby General Hospital.

Only the statements of personnel of Ruby General Hospital was noted. The persons who accompanied the patient was not enquired.

Comments:

In view of the above Government must enter into agreement with all private institutions having emergency facilities that such type of patients requiring emergency intensive therapy should not be denied admission.

That some relaxation of official procedure should be made by the management of such serious cases.

All patients attending emergency should be noted in the register and the ultimate status whether they were released, referred or denied admission by the patient party should be noted. In case of refusal of admission by the party, party's signature should be taken to avoid future complication".

From this Report it can be concluded that the name of the patient was not entered into the register and the Front Office Assistant has stated that the official procedure and the initial charges for admission prevented the party accompanying the patient to admit the patient in Ruby General Hospital.

On the basis of the said Enquiry Committee report a notice dated 27th August, 2001, was issued by the Joint Director of Health Services, Government of West Bengal wherein

it was observed that there was serious negligence and laxity on the part of the hospital by refusing admission and treatment facilities to the youth who was almost in dying condition. As no reply was received, second show cause notice was sent on 3.1.2002. Thereafter, again the third show cause notice dated 30.1.2002 was issued. It would be worthwhile to reproduce the contents of the notice which clearly reveal that the contention of the Opposite Party that the persons who accompanied the deceased wanted to take away was baseless. The relevant portion is as under:
"It has been stated that first aid was administered to the patient. But, the inspection report submitted by the 'Enquiry Team' reveals that nothing has been recorded in any register of your institution, in this regard.
It may be mentioned here categorically that any kind of treatment or catering any medical assistance to any patient ought to have been recorded in the register of the clinical set up.
It is not understandable whether proper measure was taken on your behalf, in the instant case since no documentary evidence of treatment is made available.
Again, the question of taking away of the patient by the **companion stands baseless as any such transfer should have been done in the form of** DORB/or written undertaking".

After the three show cause notices, a detailed inquiry was held on 30.4.02 and the report was finally submitted. Statements of various persons were recorded including that of Chief Manager, Receptionist, Medical Assistant, Ward boy and ors.

We would reproduce what has been stated in the said inquiry by Shri Kumar Kanti Dutta, the Front Office Assistant . The relevant portion is as under:
"4th person Sri Kumar Kanti Dutta, the **Front Office Assistant worked** for last 34 years, gave his written statement, on the day of 14th he was on duty from 7.00 a.m. to 3.00 p.m. It is his duty to do the ticket for admission of the patient including receiving of money after maintaining the rules of the organisation. On 14th at about 8.00 a.m. Sri Asis Mallick came with a person and reported for admission of a patient who was lying at the emergency in a critical stage. The patient was the case of an emergency and needed for admission in ITU. As per rules and regulation and **conventionally** he requested **them to submit Rs.15,000/-. As the party failed to deposit the money on that moment the party hurriedly left** the place without giving any scope to something for him. Since the incident from entrance to exit of the patient was of very short time he had no scope to appraise the hospital authority to give any treatment to the patient. He has nothing to say further.

The Chief Manager has stated thus:
" …. the said hospital belongs to a commercial health organisation so as per norms the staff engaged for settlement for admission applied the norms to the patient party for deposition of advance money, which was a conventional thing. But, as per his statement he tried to prove that none of the patient left without having any treatment having no money at all".

After considering the statements, the Inquiry Officer, inter alia, observed as under:

"Not only that as per his statement the accompanying person repeatedly requested to give admission and he will pay later on. But rejecting all the appeals hospital authority rejected to admit. Mr.Mukherjee and also confessed that the hospital authority had given a primary treatment at emergency. But due to want of money accompanying person shifted the patient to CNMC Government Hospital.

Finally, the Inquiry Officer came to the conclusion, inter alia, thus:
"After following through the total enquiry I being the enquiry officer come to the following conclusions:
(i). Primarily due to fatal bus accident Sumanta Mukherjee the deceased person sustained serious and grievous injuries which may be the ultimate cause of death;
(ii). Decision of prompt and adequate management for the treatment of deceased Sumanta Mukherjee from the part of the emergency Medical Officer who is being the leader of the emergency may be the cause of enhancement of death;
(iii). Misjudgment of shifting the patient to the other place is the last phase of enhancement of death;
(iv). Overall the hospital authority is not above the defective administration as because they have not accustomed to maintain records upto date;
(v). The hospital authority have engaged the staff in the emergency and its front line services are not enough experienced and qualified. They are not capable to judge the seriousness of a case as and why the allegation of carelessness of duty has been sustained;
(vi). Regarding allegation about submission of instant payment as demanded by hospital on that moment for which the accompanying person shifted the patient, has no probable ground to prove it. Only we are to depend upon the patient party. The hospital authority has furnished several proofs against such allegation, which has some strong background. The hospital authority supplied papers in regard to proofs where no advance payment was made at the time of admission and relaxation of payment also at the time of discharge was shown (copy enclosed). So the shifting of patient without receiving any treatment due to non-deposition of money may not be the fact.
As a whole, it is observed that the administration of the hospital is somewhat relaxed and no attitude to extend cooperation and help to the needbased sufferer rather the staff are trained up to collect the fees as per hospital norms. Not only that they have no idea to tackle the serious accidental case promptly and ethically".

Thereafter, by order dated 30th May, 2002, on the analysis of the inquiry reports the Joint Director held that "there **are gross negligences** in providing treatment of the acutely ill and injured patient defying all the Medical Ethics and there was gross violation of the Clinical Establishment Rules, and Act of 1950, as amended in 1998. It is a surprise as to how a moribund patient was denied life saving treatment for want of advance payment on the spot? How a patient who was advised admission at ITU of the hospital was allowed to leave the hospital for treatment

elsewhere without signing any document and Risk Bond etc? Though the patient was eventually advised for admission at ITU, and given First-Aid and allowed to leave hospital, yet those are not recorded anywhere in any of the registers of the hospital. These are gross violations of Clinical Establishment Rules".

In our view, these reports establish that there was deficiency in service by the hospital. The question of taking away of the patient by the passerby was found to be baseless. As such transfer ought to have been done in the form of DORB/or written undertaking. The evidence of the Front Office Assistant, Shri Kumar Kanti Dutta also reveals that as per the rules and regulations conventionally the person who brought the patient was required to deposit Rs.15,000/-. As the party failed to deposit on that moment the passerby hurriedly left the place without giving any scope to do something for him.

Even the Chief Manager of the hospital has admitted that the hospital authority had given preliminary treatment at emergency, but due to want of money, the accompanying person shifted the patient to Government Hospital.

This inquiry was held after giving various opportunities to the hospital. The lapse or deficiency is writ large. Therefore, in our view, the case does not require any further proof and the deficiency in service is established beyond doubt. The reason being non-deposit of Rs.15,000/- demanded by the Front Office Assistant Shri Kanti Kumar Datta.

This we state so because the learned Counsel for the Respondents vehemently contended that evidence of some witnesses are not reliable for various reasons. In this view of the matter, the other evidence is not required to be discussed in detail. Further, the importance of the Act lies in promoting the welfare of the society by enabling the consumer to participate directly in direct market economy and social welfare. This aspect is discussed in Lucknow Development Authority Vs. M.K.Gupta (1994) 1 SCC 243, in the following words:

"The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. **The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot**."

The Court considered Section 2(1)(o) which gives inclusive definition to the word service and in that context the Court held:

"The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionarily means 'one or some or all'. In *Black's Law Dictionary* it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute". The use of the word 'any' in the context it has been used in clause (*o*) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In *Oxford Dictionary* it is defined as 'capable of coming into being, possibility' ".

The Court held that the legislative intent is to protect the consumer against services rendered and the test is whether the nature of the duty and function performed by it is service or even facility. In this regard this observations of the Court are as under:

"In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility."

Cause of Death:

It is next submitted that the treatment or discontinuance of treatment by the hospital is not proved to be the cause of death of Mr.Sumanta. Hence, the Complainant is not entitled to claim damages from the respondents for the death of Sumanta.

Learned Senior Counsel Mr.Haskar appearing on behalf of the Doctors submitted that as per the post-mortem report and the evidence which was brought on record before the M.A. C.T. the doctor who carried out the post-mortem has stated that the accident was fatal and accident was the cause of death. It is, therefore, contended that the Complainant has failed to prove that not giving of treatment by the respondents has resulted in death. It was sought to be contended that in such a serious accident death was inevitable.

This submission in our view is contrary to established principles of medical

jurisprudence. Because, it is known that present day medical science believes in giving treatment till the last breath and for sometime thereafter by resuscitation. The treatment is not given to the patient only in those cases where patient is likely to survive. Treatment is given in all cases. Attempts are made to save the life even in terminal cases. Doctors always hope for the best and survival and they do not predict and say that as the death is inevitable they would stop the treatment. Life or death is uncertain and not in their hands. Still, however, patient and relatives believe that life is in the hands of Doctors. Hence, only attempts are being made by the medical science for preventing the death. Therefore, the reliance placed by the learned Counsel Mr.Haskar on the deposition of Doctor before the M.A.C.T. is of no consequence.

Undisputedly, in the present case, treatment was started and withdrawn and that the withdrawal cannot be justified on any ground. He was given treatment in the emergency room by giving moist oxygen, starting suction and by administering injection deryphyllime, injection lycotin and tetnus toxoid. There was no justifiable ground for discontinuing the treatment.

It is contended by the learned counsel for the Hospital and Doctors that because the passerby who had brought the deceased in the Hospital wanted to take him to Government Hospital and hence treatment was discontinued, is not at all acceptable. Firstly, if the deceased was to be taken to a Government Hospital, there was no question of bringing him in Ruby Hospital, at the initial stage. As per the record other cyclist who was coming from poor strata was taken to Government Hospital and the deceased was brought to the Ruby Hospital. Secondly, it is established on record from the departmental enquiry quoted above and from the admission of the Front Office Assistant that there was demand for initial admission charges and that prevented the persons accompanying the patient to admit him in Ruby Hospital. It is the procedure of the Hospital to admit the patient after receiving the money. As per the statement of the Chief Manager, the Hospital, belongs to commercial health organisation and as per the norms the staff engaged for settlement for admission applied norms to the patient for depositing of advance money. In our view, therefore, the contention of the Hospital that the passer-by who brought the patient to the Hospital wanted to take him to Government Hospital is baseless. In any case, the transfer from one Hospital to the other Hospital was required to be done in the form prescribed and after taking a written undertaking. Nothing was done. This establishes beyond doubt that admission to deceased Sumanta was refused solely on the ground that the persons who brought him in the Hospital were not in a position to deposit the amount of Rs.15,000/-.

Further Once the treatment has started, it would mean that the Complainant has hired the services. May be at the relevant time the consideration was not fixed or not paid. But, it was either promised, deferred or because of implicit duty of a noble profession

in such emergency cases.

Compensation:

Many submissions are made by the learned Counsel for the Opposite Parties on this question. The main contention was that before the M.A.C.T. claim was for a sum of Rs.17,73,000/- which included the income of the deceased, dependency factor and the claim which was made by the parents of the deceased, only an amount of Rs.3,78,500/- was awarded by the Tribunal. And, therefore, the claim of Rs.2.20 Crores before this Commission is wholly exaggerated and without any basis.

In the amended complaint, the claim of compensation is reduced to Rs.1.33 Crores.

In the present case, considering the facts and deficiency in service and withdrawal of the treatment to a young boy who was badly injured in a motor vehicle accident, compensation is to be awarded not only on the basis of principles applicable in Tort, but on the basis of Section 14 of the Act and interpretation thereof. Section 14 of the Act confers jurisdiction on the Commission to award damages for any loss or injury suffered. Injury would include mental agony and torture. In Lucknow Development Authority (Supra) the Court observed that the word compensation used in Section 14 is of very wide connotation and has not been defined under the Act and held (para 14), "in legal sense it may constitute actual **loss** or expected loss and may extend to physical, **mental or even emotional suffering, insult or injury or loss**". Further, in Spring Meadows Hospital and Anr. Vs. Harjol Ahluwalia & Anr, (1998) 4 SCC 39, the Apex Court considered the similar contention and observed that the compensation is to be awarded in favour of the parents of the minor child for their acute mental agony and the life-long care and attention which the parents would have to bestow on the minor child. In the said case the contention was raised that for the expenses for the treatment of the child the parents were not required to spend because the hospital authorities were taking care without charging any money for the services rendered. In that context the Court observed:

"….. We, however, fail to appreciate this argument advanced on behalf of the learned counsel for the appellants inasmuch as the mental agony of the parents will not be diminished in any manner merely seeing the only child living in a vegetative state on account of negligence of the hospital authorities on a hospital bed".

It is also an established law that under the Act National Consumer Forum has jurisdiction to award compensation depending upon established facts and the circumstances of the case. While dealing with such contention in Charan Singh Vs. Healing Touch Hospital & Ors., (2000) 7 SCC 668, the Court observed that the consumer forums are required to