

Medical negligence: Will the Anuradha Saha case set a precedent?

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Some experts say by questioning the doctor's treatment, the verdict marked the start of 'something big' in India

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New Delhi: A ruling by the Supreme Court holding three physicians responsible for the death of a woman in a Kolkata hospital 15 years ago and awarding a record compensation is being hailed as a potential turning point in Indian legal history.

Yet, nothing much may change if the current practice of the medical fraternity banding together to see off legal challenges continues undented, experts said.

The apex court's 24 October verdict established gross dereliction of duty by doctors in a high-profile case of medical negligence launched over the death of Anuradha Saha, a US-based psychologist who had been wrongly treated by doctors in Kolkata.

It marked the highest compensation ever ordered in a case of medical negligence in India. The court ordered a compensation of ₹ 5.96 crore, which with interest crosses ₹ 11 crore.

More significantly, justices [S.J. Mukhopadhyaya](#) and [V. Gopala Gowda](#) held out their 210-page verdict as a “deterrent and a

reminder" to the medical community—a first in a medical negligence case in India. The case was filed by Anuradha's husband [Kunal Saha](#), himself a doctor.

Some legal experts maintained that by questioning the doctor's treatment, the verdict marked the start of "something big" in India, where the relationship between a doctor and a patient remains highly unequal.

"Most doctors take offence when the patient or family wants a second opinion," said [Anand Grover](#), a lawyer who has worked extensively on public interest issues. "This was a doctor questioning another doctor, so while it does not exactly mean every marginalized patient is empowered, this is a start of something big."

"The medical fraternity has taken note of this case. It gives me hope that people will be able to question a doctor's decision, unnecessary surgeries or discriminatory practices," he added.

Besides pinning the blame on the doctors involved, the top court also came down heavily upon the callousness of the errant doctors, saying: "The court abhorred the shifting of blames by the senior doctors."

Anuradha Saha, a 36-year-old Ohio (US)-based child psychologist who was visiting India, approached Sukumar Mukherjee, a doctor at Nightingale Diagnostic Centre in Kolkata, on 7 May 1998 complaining of acute pain, fever and rashes.

The doctor's decision to administer a higher-than-recommended dose of a steroid called Depomedrol is at the core of what was wrong with the treatment regimen. According

to Kunal Saha, his wife was administered 80 mg of Depomedrol straightaway and prescribed two injections daily for three days.

The maximum recommended dose of the drug for any clinical condition is 40-120 mg —at a minimum interval of 1-2 weeks between the doses.

When Anuradha's condition did not improve, she was admitted to AMRI Hospitals on 11 May. This is the same hospital that was shut down on grounds of negligence in 2011 after a fire gutted one of its buildings, killing 93 people, mostly patients and nurses.

At AMRI Hospitals, Anuradha was administered another steroid, Prednisolone, in a tapering dose—continuing the treatment for allergic vasculitis, which is an extreme reaction to a drug, leading to inflammation and damage to blood vessels of the skin. Mukherjee then left for US on a pre-arranged visit, leaving Anuradha in the care of dermatologist Balram Halder and physician Abani Roychowdhury.

The court documents state that while handing over the patient, “most culpably, he (Mukherjee) did not even prescribe I.V. (intravenous) fluid and adequate nutritional support which was mandatory in that condition”. By 12 May, Anuradha had been correctly diagnosed by Halder as suffering from toxic epidermal necrolysis (TEN), but there was no drastic shift in the treatment regimen.

TEN is a rare skin condition caused by a reaction to drugs, where the top layer of skin detaches from the lower layer all over the body.

With no sign of improvement, Anuradha was taken to Breach Candy Hospital in Mumbai, where she died on 28 May 1998.

In March 1999, US-based Kunal Saha launched what would be a 15-year-long battle to pin responsibility of negligence on the doctors. He issued legal notices to as many as 26 people who had treated Anuradha, alleging negligence, and filed a complaint at the National Consumer Disputes Redressal Commission (NCDRC).

Kunal initially lost his fight as the West Bengal Medical Council and Calcutta high court both dismissed his case against AMRI Hospitals.

The NCDRC, however, found the hospital and its doctors guilty of medical negligence and fixed a compensation amount of ₹ 1.7 crore.

At this point in 2009, Kunal moved the Supreme Court, claiming that the compensation amount, along with interest since 1998, should be fixed at ₹ 200 crore. The 24 October judgement on the quantum of compensation, say legal experts, is of immense importance.

“This judgement is going to have a very significant impact for all compensation cases in future and especially in medical negligence cases,” said [T.V. George](#), an advocate in the matter.

On the method of calculating compensation, he said, “Earlier for the purpose of compensation for the loss of a life, generally speaking, the courts and tribunals used to calculate the deceased’s net annual income and multiplied the same with 10-

18 years of loss—even if the victim was expected to work and earn for a longer period.

“In the present case, the deceased’s annual net income was multiplied by 30 years of loss. Anuradha Saha was 36 when she died and 30 years loss of income is calculated on the assumption that she would have worked at least till 66 if the negligence had not cut off her life. Thus, the victim’s expected remaining working years is taken as the criteria for calculation of compensation without any arbitrary limits.”

Apart from the above, the time-consuming judicial process has also been a factor in the compensation.

“The case has taken into account the delay in judicial proceedings and the decrease in the value of money in the meanwhile,” said George. “If a person claims ₹ 10 lakh as compensation and the case is decided 15 years latter, even if his entire claim is awarded, in terms of actual value of money, he may not be adequately compensated. The Supreme Court expressly held that in such cases the courts can award an amount beyond what is actually claimed.”

Saha had filed a criminal as well as civil case against the doctors and the hospitals. In 2009, the apex court cleared the accused of criminal liability for medical negligence, but held them culpable of civil liabilities.

In establishing civil liability and dereliction of duty by the doctors, the Supreme Court minced no words.

Yet, the verdict, despite sounding a strong warning to the medical fraternity, may not change much as far in terms of holding negligent doctors responsible.

Mukherjee, in fact, will actually get back some money— the earlier verdict by NCDRC had imposed a fine of ₹ 40.4 lakh on him while the recent judgement asks him personally to pay only ₹ 10 lakh.

Despite repeated attempts to get in touch, Mukherjee was unavailable for comment. Besides a thriving practice, Mukherjee is a consultant with the West Bengal government as its chief advisor on health issues.

While physician Roychowdhury died in 2011, dermatologist Halder, now an 80-year-old retired heart patient, had requested the court to set aside his liability of compensation as he was no longer employed.

Legal experts maintain that medical negligence cases are, by and large, decided in favour of doctors.

“The Medical Council of India intervenes and invariably doctors called on as experts do not go against their fraternity,” said a lawyer requesting anonymity.

“This case is an exception because the petitioner himself was a doctor. The amount of compensation is irrelevant. One would be very optimistic to think the case will see a spate of litigations going in favour of marginalized patients, who currently are not even given informed consent in most cases. “Further, even for Saha, who had the wherewithal to pursue the case relentlessly, it took 15 years. Most affected parties lack that doggedness required to take a case of medical negligence to its logical conclusion.”