

MEDICAL NEGLIGENCE AND SOCIO LEGAL ASPECTS

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ABSTRACT

The right to health is one of the most important constitutionally recognized rights granted to the citizens of India. Citizens have a right to not only obtain treatments or health facilities but also to be treated by health care providers who are competent to treat them. While we may logically conclude that a health care provider cannot work magic, it needs to be understood that this cannot absolve a medical practitioner from liability during the course of provision of their services. The concept of medical negligence while not directly recognized by the legislature expressly under the law has been duly recognized by the courts wherein the courts have attributed civil and criminal liability to medical practitioners in cases of proven negligence.

Most of the cases dealing with medical negligence end with the payment of compensation to the aggrieved or to the relative of the aggrieved. It is important that the compensation payable by the liable person is fairly and justly computed with reference to certain principles which are only advisory in nature. There can never be a fixed amount which the law can prescribe as compensation.

This paper attempts to explain the concept of medical negligence along with the judicial interpretation thereof. The judicial trend has evolved with the increasing instances of cases filed before consumer forums claiming for compensation. Whilst one cannot put a value on the life of an individual, an endeavor has been made by the courts to try and lend some comfort to an aggrieved person. This paper also attempts to make the reader understand the judicial interpretation with regard to compensation payable in cases of medical negligence along with certain suggestions to improve the redressal system available to the citizens who wish to approach the consumer forum for justice.

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MEDICAL NEGLIGENCE: SOCIO LEGAL ASPECTS

Medical negligence is any act or omission conducted by a health care provider which causes detriment to the service recipient irrespective of whether the detriment or damage is of a temporary or permanent character. The act of deviating from the normal health standards as are typically followed by the health care providers constitutes medical negligence. For an act to be construed as medical negligence, it is required to be satisfactorily proved that the health provider has not acted in a manner which is reasonably required of him and has been specifically careless in the provision of his duties.

Medical negligence is no longer purely a social issue. The fact is that with the increasing cases initiated by aggrieved consumers before the consumer forum, the concept has taken a legal turn wherein the duties of health care providers are now subject to intense scrutiny by the judicial forums across the nation. The onus to prove that a health care provider has been negligent in pursuing the duties lies on the complainant who is required to show case how the health provider has deviated from the normal course of his duties. This principle is dependent on the legal principle of law that a person is presumed innocent until proven guilty. This has often been the reasons why health care providers get away with limited punishments irrespective of the gravity of the injury caused due to their negligence.

Excerpts from the newspapers show that the health care providers no longer feel morally bound to their duties and consider themselves on par with any other professional or service provider. This has created a huge discontent in the society and has aggravated the society to take up the issue more proactively with the judiciary. Medical service providers however argue that they are not miracle workers and therefore, every failure to save a life cannot be construed as negligence from their side. The fear of litigation and the loss of reputation linked to the initiation of such claims have also created a lot of apprehension in the minds of the medical services provider in the discharge of their duties. In light of this, the judiciary has intervened in a very successful manner to try and comprehend what are the standards of care expected out of a health care provider and what deficiencies in the service would really constitute medical negligence.

JUDICIAL INTEPRETATIONS

The first and foremost point in context to the Indian law is that there is no specific defined law applicable to health care providers for medical negligence. Since negligence is a tortuous

crime, medical negligence often leads to civil penalties as opposed to criminal penalties. The Indian Penal Code, 1860 provides for certain criminal activities which do cover medical negligence in its ambit. There are three essential constituents required for negligence: there must be the existence of a duty and such duty must be acknowledged; there has to be a breach of the duty and the aggrieved has suffered damage. It must be agreed by most of the people that when a doctor commences his practice, there is an implied warranty given by him that he is competent to provide medical advice. It is to be clearly understood that like most professionals, a doctor is permitted to have an error of judgment. This often leads to confusion that if there is an injury caused to a person due to the error of judgment of a doctor, would it be construed as medical negligence. This has been clarified by the Supreme Court in the *Jacob Matthews v. State of Punjab*¹ wherein the court observed that: *“In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution.... He does not assure his client of the result...A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on... ..Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices. ...A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.*

¹ AIR 2005 SC 3180

To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.”

A reading of the above excerpt from the judgment indicates that the parameters required to refute an allegation of medical negligence is that the health care provider should have acted in a reasonable manner and as an ordinary person possessing his skill set would have acted. The law has never placed any parameters on the skill of a person to form a case of medical negligence. Another interesting point to note in this case was that the health care provider refuted allegations of criminal liability to say that there was no mens rea or bad faith to cause harm and therefore, mensrea being an essential factor for criminal liability, there was no criminal liability. Secondly, the case sought to make a distinction between simple negligence wherein a doctor would compensate the aggrieved and a case of gross neglect wherein the negligence quotient was high enough to endanger the life of a patient and in such cases, doctors would be subject to criminal liability.

For an extremely long time, the judgment in the Jacob Matthews case was followed and agreed upon as being accurate in relation to health care providers. In the case of *Martin D’Souza v. Mohd Ishfaq*², Justice Katju and Justice Singhvi have stated that the principles laid down in the Jacob Matthews case are purely subjective. It is difficult to determine what constitutes reasonable care which is required to be given by a medical professional. Further, the distinction between simple and gross negligence is an extremely subjective idea and again depends on the understanding of the judge in the particular case. They have further acknowledged that the judges do not possess medical knowledge and to a large extent each case would also be determined in accordance with the notions of the judges. The judges stated: *“The law, like medicine, is an inexact science. One cannot predict with certainty an outcome of many cases. It depends on the particular facts and circumstances of the case, and also the personal notions of the Judge concerned who is hearing the case. However, the broad and general legal principles relating to medical negligence need to be understood.”*

Another important point laid down by this court was that to avoid the increasing litigation against the medical fraternity, any notice issued by the consumer court to a doctor pursuant to

² AIR 2009 SC 2049

the filing of a complaint by an aggrieved would have to be done only after ensuring that the case was referred to a medical committee who assess the facts of the case and decide whether a notice should be issued to the concerned doctor.

This requirement of referring the case to an expert was done away with in the case of *V. Kishan Rao v. Nikhil Super Specialty Hospital*³ wherein the court laid down that no expert opinion was required if at all the negligence was prima facie such as rendering of the wrong treatment or administering of prescribing wrong medication.

In the case of *Marghese v. Dr. Mehta*⁴, the Supreme Court gain took cognizance of the principles laid down in the Kishan Rao case and stated that where the facts of the case prima facie indicated medical negligence, the courts would have to acknowledge that irrespective of an expert opinion.

Another extremely crucial point which has been debated upon widely is that of the compensation awarded to the aggrieved persons. The importance of awarding just and fair compensation has been stressed on many cases especially awarding uniform compensation in those cases wherein the facts of the litigation are the same. The practice of awarding uniform compensation in uniform situations is extremely important in maintaining the satisfaction and trust in the system.⁵

Typically and until the Kunal Saha case, the courts have followed a multiplier method which awarded the compensation. The multiplier method, primarily, uses two numbers – the multiplicand and the multiplier – to arrive at a number, which shall be the compensation. Typically, one of the numbers – the multiplicand – is the quantum of compensation determined for every year's loss of earning minus the amount the victim would have spent on himself, and the other number – the multiplier – is the difference between the average life, as per the life expectancy data available, and the age of the deceased minus the number of years for which he would be unproductive, and also taking into account any other risk factors of bad health, accident, etc. which would have shortened the productive age without any negative contribution of the medical negligence. Thus, the multiplier used for arriving at the

³ 2010 (5) SCR 1

⁴ 2011 SC 249

⁵ *Sarla Verma & Others v. Delhi Transport Corporation & Others* (2009) 6 SCC 121

compensation is much lesser than simply the difference between average age and the age at the time of suffering from medical negligence.⁶

The main aim of the judiciary has always been to award a uniform and just compensation which may render some comfort to the aggrieved. If the multiplier system is deemed just as per the facts of the case, that particular method should be used. The judiciary changed the trend of consistently using the multiplier method in the case of *Nizam Institute of Medical Sciences v. Prashanth Dhanaka & Ors.*⁷ Wherein the court has stressed that the “*The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method.*”

This principle has been stressed upon by the court in the case of *Dr. Balaram Prasad & others v. Dr. Kunal Saha*⁸ wherein the court has held that “*The multiplier method was provided for convenience and speedy disposal of no fault motor accident cases. Therefore, obviously, a "no fault" motor vehicle accident should not be compared with the case of death from medical negligence under any condition. The aforesaid approach in adopting the multiplier method to determine the just compensation would be damaging for society for the reason that the rules for using the multiplier method to the notional income of only Rs.15,000/- per year would be taken as a multiplicand. In case, the victim has no income then a multiplier of 18 is the highest multiplier used under the provision of Ss. 163 A of the Motor Vehicles Act read with the Second Schedule.... Therefore, if a child, housewife or other non-working person fall victim to reckless medical treatment by wayward doctors, the maximum pecuniary damages that the unfortunate victim may collect would be only Rs.1.8 lakh. It is stated in view of the aforesaid reasons that in today's India, Hospitals, Nursing Homes and doctors make lakhs and crores of rupees on a regular basis. Under such scenario, allowing the multiplier method to be used to determine compensation in medical negligence cases would not have any deterrent effect on them for their medical negligence but in contrast, this would encourage more incidents of medical negligence in India bringing even greater danger for the society at large.*” This case has seen one of the highest amounts of compensation awarded to an aggrieved person. There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the

⁶ <http://www.iimahd.ernet.in/assets/snippets/workingpaperpdf/15451890132014-03-27.pdf>

⁷ (2009) 6 SCC 1

⁸ (2014) 1 SCC 384

status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statute or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.⁹

In light of the same, the judiciary has come forward to protect the interests of the aggrieved persons by not applying the multiplier method in all cases of medical negligence. The concept of fair and just remuneration still remains the bedrock on which the judiciary functions and the discretion is left to the judiciary to determine the manner in which the compensation should be computed.

CRITICAL ANALYSIS

It is important that a balance is brought between the societal expectations and the judicial decisions to maintain harmony and to secure the belief of the citizens in the judicial system. However, there are still some lacunae which are noticed in the way the legal system tackles the issue. A doctor who renders service free of charge does not come under the purview of the Consumer Protection Act, 1986 since his duties do not cover under the purview of “services” under the Act.¹⁰ This would essentially mean that no action can be brought under the Act against a doctor who works in a government hospital or charitable hospital without charging any fee. This needs severe redressal by the government since majority of our population resorts to government hospitals for lack of affordability of private hospitals.

In most cases, the quantum of compensation awarded differs from case to case even though the facts of the case are principally the same. For this purpose, a set of guidelines need to be evolved by the legislature for reference by the judiciary in determining the quantum of

⁹ *Parmanand Kataria v. Union of India* 1989 AIR 2039

¹⁰ *Indian Medical Association v. VVP Santha* 1996 AIR 550

compensation of each case. This would greatly aid in bringing about some element of uniformity in judicial decisions which would reinforce the faith of the people in the judicial system. Statistical studies could be conducted to understand what the kinds of negligence committed are and an endeavor could be made to classify them for better understanding. These guidelines or consultative papers could purely be for reference purposes, they need not be made the law of the land.

It has become extremely difficult to affix liability of medical negligence on a health care provider. The most commonly adopted argument by the health care provider is that the doctor is not the only concerned person in charge and responsibilities also lie on the hospital and other staff assisting in the treatment. For this purpose, the judiciary needs to be assisted by a panel of medical practitioners who are not interested in the suit at hand to understand and review from where the negligence has emanated. While this is done by the judiciary in a few cases, it is strongly suggested that an independent panel be set up with experienced practitioners who shall mandatorily review and render advice in each case. Keeping in mind that the judiciary may not always be well versed with the medical complications in each case, the panel as suggested may aid in the better understanding of each case thereby assisting in determining the compensation.

The recent trend of health care providers commercializing their services has led to catastrophic consequences. There are increasing instances of doctors refusing to treat patients who are critically ill on frivolous grounds such as delay in filling the relevant forms. With the recent demonetization policy, we have seen instances wherein the doctors have refused to treat patients including minors due to lack of available currency. This refusal to treat patients needs to be strictly and stringently penalized more severely than medical negligence. Whilst refusal to treat patients' does not constitute negligence in a direct manner, failure to do anything regarding it will lead to more instances.

Right to health is one of the most important rights of society. It is important to conduct workshops amongst the lower sections of society to make them aware of the rights available to them in case they are aggrieved by the act of any health care provider. It is essential that the trend of the judiciary also progresses with the societal changes and the demands of the society. Since the society is the service recipient, their grievances and complains are of paramount importance. The governmental organs including the judiciary are present to serve the interests of the general public. Efforts should be made to ensure that medical practitioners

do not absolve themselves from liability merely due to lack of mens rea or on account of vicarious liability. Criminal liability should be affixed in relevant cases to emphasize on the importance of their profession and their professional duties. This would be the contribution of the judiciary in ensuring that the health of every individual becomes their wealth.