

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

RFA.No.70634/2023

Mariam Sajjad **VS.** Prof. Dr. Rasool Ahmed
Chaudhary.

Date of hearing	19.12.2023
Appellant by	Mr. Mubashar-us-Saqib Gill, Advocate
Respondent by	Mr. Shahzad Saleem Khawaja, Advocate

Ch. Muhammad Iqbal, J:- Through this single judgment, we intend to decide the titled appeal alongwith Regular First Appeal No.74489 of 2023 as both these cases have arisen out of the same judgment & decree.

2. Through these appeals under Section 96 CPC, the appellant/plaintiff and respondent/ defendant have separately challenged the judgment and decree dated 12.09.2023 passed by the learned Civil Judge, Faisalabad, whereby the suit for recovery of Rs.750 Million by way of damages filed by the appellant was partially decreed to the extent of Rs.50,00,000/-.

3. Brief facts of these appeals are that Mariam Sajjad [hereinafter referred to as the “appellant/plaintiff”] was BSc student of the University of Agriculture, Faisalabad enrolled in

5th Semester in the year 2012. The appellant experienced pain in her arm on 11.12.2012, thus she along with her father (Sajjad Anwar) went to Allied Hospital, Faisalabad (hereinafter referred to as the “Hospital”) for medical checkup. After radiography (X-ray), the appellant was diagnosed with “Cervical Rib” disease and Prof. Dr. Rasool Ahmed Chaudhary [hereinafter referred to as “respondent/defendant”], an Orthopedic Surgeon of the said Hospital advised for immediate surgery and on the same day the appellant was admitted in the Hospital. The respondent performed surgery of the appellant on 17.12.2012 but the appellant complained on 18.12.2012 that she could not sit as her lower section of the body was not functioning and she had lost control over urination and bowels. The father of the appellant accordingly informed the said condition to the respondent who at that stage, sought an advice from Neurosurgeon of the Hospital. After MRI & CT Scan tests, Dr. Tariq Ahmad, Neurosurgeon opined that during surgery process, three vertebrae, (T1, T2 & T3) of appellant were damaged and spinal cord got cut due to negligence of the surgeon/respondent.

The father of appellant made complaint to the Hospital administration and accordingly a medical board comprising of (i) Dr. Javed Iqbal (Neuro Physician), (ii) Dr. Syed Anjum Mehdi (Asst. Prof. of Radiology), (iii) Dr. Shehzad Awais (Prof. of Surgery) and (iv) Dr. Tariq Ahmed (Head of Neurosurgery,

Department) was constituted to probe the matter. The said board submitted its report on 29.12.2012 and held that the respondent/ defendant has committed negligence while conducting operation due to which appellant/plaintiff has lost control over her lower portion of the body.

Against the above sheer medical negligence of the respondent, a complaint was filed with the Punjab Healthcare Commission, who after a thorough probe into the matter and obtaining opinions of Medical Experts of the relevant fields, gave final findings making recommendation to the Government of Punjab for taking various stern actions against the respondent. Being dissatisfied with the said opinion/ observation, the respondent preferred an appeal before the Sessions Judge, Faisalabad who dismissed the appeal on 16.12.2014 holding the respondent as guilty of medical negligence. Against the above said orders, the respondent filed Writ Petition [No.1031/2015] which was also dismissed on 20.09.2016. That even the Health Department after holding independent inquiry, found the respondent negligent and vide order dated 29.04.2015 imposed major penalty of withdrawing of his pension under Section 4(1)(c)(ii) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006.

After the above determinations of negligence of respondent, the appellant filed a suit for recovery of Rs.750

million by way of damages against the respondent. In response to the notice, the respondent appeared and filed contesting written statement on the factual and legal parrances. As per divergent pleading, the learned trial court framed issues, recorded pro and contra evidence of the parties and partially decreed the suit to the extent of Rs.50,00,000/- and declined rest of the claim of the appellant vide judgment and decree dated 12.09.2023. Hence, this appeal with the prayer that the suit may be decreed as prayed for on the ground that the impugned judgment & decree to the extent of denying rest of the claim of the appellant is based on mis-reading and non-reading of record and evidence.

4. The respondent/defendant has also challenged the above judgment & decree of the trial Court through the connected appeal (RFA No.74489-2023) contending that the impugned judgment and decree was passed on the basis of mis-reading and non-reading of evidence as well as record, as such it may be set-aside and the suit of the appellant/ plaintiff may be dismissed.

5. We have heard the arguments of the learned counsels for the parties and gone through the record.

6. The main controversy involved in these appeals is centered upon issue No.1 which is reproduced as under:-

“1. Whether the plaintiff is entitled to recover the amount of Rs.750/-million, from the defendant by way of damages and compensation for the wrong, unauthorized, negligent, medical advice/operation conducted by him, which resulted in her disability, malady of breathing corpse, alongwih spoiling of her academic career? OPP”

The appellant/plaintiff sought damages, detail of which is given in Para-11 of the plaint, as under:-

- i. Loss of bodily damage: Rs.300 Million
- ii. Loss of society of relations with friends/relatives and well wishers: Rs.50 Million
- iii. Sufferings of pain on incapacitation: Rs.150 Million
- iv. Loss of pleasures of life: Rs.50 Million
- v. Mental worries and anxieties: Rs.100 Million
- vi. Loss of career and future prospects:Rs.100 Million

Onus was upon the appellant/plaintiff to prove the claim as well as the above issue. The appellant/plaintiff, Marriam Sajjad herself appeared as PW1 and stated that she was a student of BSc in Agriculture University, Faisalabad. That she felt pain in her arm about one month before her operation. She along with her father went to the Hospital where respondent/Dr. Rasool Ahmed, the head of Orthopedic Surgery medically examined her and told that her problem is of Cervical Ribs, which needed prompt surgery and also cautioned that if the surgery is not done at the earliest then her arm and lungs would be damaged. On 17.12.2012, the appellant was operated upon by the defendant and after the surgery she felt senselessness of her lower portion of body and lost her control over urination and bowels. Next day, the defendant checked her and referred her to Ghurki Hospital, Lahore for further treatment. That medical board was constituted in Hospital and her MRI & CT scan were conducted wherein it was opined that Cervical Rib of the appellant/plaintiff is intact as it was before operation whereas her vertebrae (T1, T2 & T3) as

well as spinal cord were damaged whereas Cervical Rib was not cured. They (appellant) filed application to the Punjab Healthcare Commission wherein it was declared that the defendant conducted a wrong operation and due to his negligence her body was damaged. That Dr. Rasool Ahmad, an Orthopedic surgeon made a wrong medical advice. After operation, she was not in a position to walk and stand without any support. She is no more in a position to live a normal life as her body was also damaged. She claimed damages of 30 crore for body damages, 10 crore for loss of social activities, 15 crore for suffering of pain and incapacitation, 5 to 10 crore for loss of pleasure, 10 crore for mental worry, anxiety and spoiling of her future and further Rs.10 crore should be given as fine to her. That she went permanently incapacitated/disabled due to negligence of the defendant. In cross examination, she admitted it as correct that her operation was conducted in government hospital (Allied Hospital) and the defendant is a professor doctor in the government hospital. That she is student of university of Agricultural since 2010 and she passed M.Phil examination from Agricultural University. Dr. Shahzad Anwar appeared as PW2 who stated that plaintiff is his niece. She complained pain in her arm on 11th December, 2012 and she was taken to Allied Hospital where Dr. Rasool Ahmad Chaudhary examined her and after taking X-Ray advised that the operation is needed for her

Cervical Ribs and also opined that if the operation is not done at the earliest, the arms of the plaintiff would become useless and her lungs would burst. On 17.12.2012, the operation was done and normally this kind of operation is not done by Orthopedic surgeon and if the same was to be performed by him then it was to be done in the presence of a Neurosurgeon. After MRI and CT scan, the Neurosurgeon came to the conclusion that lower body of the plaintiff was not working, as two vertebrae of the plaintiff were completely damaged whereas third was half damaged and spinal cord was also damaged. That a board was constituted in Allied Hospital which also opined that the Cervical Rib is intact as it was before operation but the vertebrae were broken and spinal cord was damaged due to negligence of the defendant. On the advice of Dr. Tariq Ahmed Neurosurgeon, the plaintiff was sent to Ghurki Hospital where second operation of vertebrae was conducted and Titanium cage was installed, but even then she is not in a position to live normal life. In cross examination, he deposed that:-

یہ بات درست ہے کہ وہ سر جن ڈاکٹر ہیں میرے پاس جو knowledge ہے
اس کے مطابق ہے آر تھوپیڈک سر جن اس قسم کا آپریشن نہ کر سکتے ہیں۔

Mst. Azra Sajjad (mother of the plaintiff) appeared as PW3 who stated that the plaintiff felt pain in her arm. When they went to Allied Hospital, Dr. Rasool Ahmed examined her and advised for X-Ray and after X-Ray the Doctor advised for operation and

warned that otherwise her (appellant's) arm would become useless and lungs would be damaged. Dr. Rasool Ahmad/defendant operated upon the plaintiff and after operation the lower portion of the plaintiff's body was not working and she lost control over urination and bowels. Further deposed that:-

جب ڈاکٹر سے پوچھا۔ اس نے اس کی Cervical Rib کا آپریشن کرنے تھا وہ تو
کیا نہیں اور میرے توڑ دیے اور حرام مغز کو نقصان پہنچایا

At the time of operation, the plaintiff was student of B.Sc. and after her surgery her lower portion is not working due to negligence of Dr. Ghulam Rasool. That she is looking after her daughter who is mentally upset due to broken vertebrae and she feels pain and they claimed Rs.75 crore as damages. Sajjad Anwar appeared as PW4 who stated that plaintiff is his daughter who was student of Agricultural University in 2012. Defendant was Orthopedic Surgeon in Allied Hospital and was also head of department. That the plaintiff felt pain in arm and they went to Allied Hospital on 11.12.2012. Defendant examined her, got done her X-ray and advised that the plaintiff has Cervical Ribs problem which required immediate surgery and if the operation was not conducted then her arm would become useless and lungs would be damaged. On 17.12.12, the defendant conducted operation of the plaintiff. Defendant did not advise her for physiotherapy as problem could be resolved by physiotherapist but this advice was not given by the defendant/Dr. Rasool

Ahmed. The operation of Cervical Rib could not be conducted by the Orthopedic Surgeon rather it could only be done by Neurosurgeon or Thoracic or it can be done by Orthopedic Surgeon in company of the Neurosurgeon. On 18.12.2012, the patient stated that lower portion of her body has become senseless and she lost her control over urination and bowels. Dr. Tariq Ahmed, Neurosurgeon examined her and advised for MRI scan test and after MRI it was disclosed that her three vertebrae T1 to T3 had been damaged and spinal cord had got a cut. In this regard, a board was constituted and again MRI & CT scan were conducted, from where it revealed that due to negligence of the surgeon, three vertebrae T1, T2 and T3 were damaged and her lower portion of the body became senseless. That they filed application to the Healthcare Commission who sought report wherein it was disclosed that she cannot ever recover. She is not in a position to walk and stand without any support. Further deposed that:-

اپنی جگہ موجود ہے یہ بات میڈیکل بورڈ کی رپورٹ میں موجود ہے۔ ہم نے ہیلٹھ کیئر پنجاب میں بذریعہ وزیر اعلیٰ پنجاب Complaint کی جنہوں نے انکواڑی کا حکم دیا اور کمیشن نے مکمل انکواڑی کے بعد یہ تمام چیزیں اپنی رپورٹ میں درج کی ہیں جو کہ Annexure-D میں موجود ہیں ہیلٹھ کیئر کمیشن نے مدعایہ کالائسنس منسوخ کرنے کے لیے PMDC کو لیٹر بھی لکھا۔۔۔۔۔ مدعایہ کا 3 میڈیکل بورڈ معافہ کرچے ہیں جس میں آلامیڈ ہسپتال Disability Medical Board گھر کی ہسپتال کا میڈیکل بورڈ شامل ہیں تینوں کی رپورٹ کے مطابق مدعایہ کے غلط علاج کے نتیجہ میں مدعایہ مفلوج ہوئی ہے اور اسکا ساری عمر مکمل خیک ہونے کا کوئی امکان نہ

ہے۔ مفروج ہونے کی وجہ سے اسکو مستقل Depression, Anxiety تکلیف جسمانی کا سامنا اسکے مستقل علاج پر جاری کیا گرچہ آرہا ہے جس میں فزیو تھر اپی کا مستقل خرچ فنی میں ائینڈنٹ کا مستقل خرچ، آنے جانے کے لیے کے اخراجات شامل ہیں۔ Transport

In documentary evidence, appellant/plaintiff produced certified copy of OPD Allied Hospital as Exh.P1, certified copy of report special of medical board as Exh.P2, certified copy of report of Healthcare Commission as Exh.P3, order dated 16.12.14 of ASJ as ExhP4, certified copy of order dated 11.09.14 of ASJ as Exh.P5, legal notices as Mark-A and Mark-B, receipt of TCS as Mark-C and disability certificate as Exh.P6.

7. Conversely, Prof. Dr. Rasool Ahmad Ch. (defendant) appeared as DW1 who stated that on 11.12.2012 he was present in Room No.15 of Out Door Patients Department of Allied Hospital. The plaintiff came in his room after taking out door receipt and he examined the patient. He advised for X-Ray whereafter he examined the patient and found Cervical Rib operation is necessary whereafter they went away and after a while some doctors came with the patient for surgery of the patient. He admitted the patient in the Orthopedic Ward. For a few days, the patient remained admitted in the Hospital and later on she was discharged. He obtained the signatures of her father. On 17.12.2012, he conducted the operation in Allied Hospital on government expenses. Later on, she complained regarding senselessness of her legs. Neurosurgeon was called who

examined her and found a problem of her vertebrae. Healthcare Commission announced decision against him. In cross examination, he deposed that he admitted the plaintiff after checkup in out door. Further deposed that:-

آپریشن کے لیے ہم اپنے شعبے کے آپریشن کے علاوہ باقی کسی شعبے کے ڈاکٹر صاحب سے عام طور پر consult نہیں کرتے سوائے کچھ cases میں۔ اس کیس میں نیورو سرجن سے consult کرنے کی ضرورت نہ تھی۔ ریکارڈ میں مدعاہدہ یا اس کے لواحقین نے آپریشن کے لیے consent دی ہوگی۔ یہ درست ہے کہ آپریشن تھیز میں آپریشن کے متعلق مریض کی فائل پر سب کچھ لکھا ہوتا ہے۔ Cervical Rib کا ہی آپریشن مدعاہدہ کا کرنا تھا میڈیکل Field میں سرجن کے لیے ضروری نہ ہے کہ وہ آپریشن سے پہلے کسی دوسری سرجن سے Consult کر لے۔ مریضہ مدعاہدہ نے جب نجی دھڑکام نہ کر رہا تھا کے بارے میں بتایا تو میں نے نیورو سرجن سے consult کیا تھا۔ یہ درست ہے کہ آپریشن کے بعد نیورو سرجن سے رابطہ کیا تھا۔ Report P2 پر میرے signature میں۔ میں نے گھر کی ہسپتال میں مدعاہدہ کو Refer کیا تھا۔ Standing Medical بورڈ Recommendation کیا جس کی وجہ سے گھر کی ہسپتال مریض کو بناتھا جس نے Recommend کیا جس کی وجہ سے گھر کی ہسپتال مریض کو Personal Request پر مریضہ گھر کی Refer کیا گیا۔ یہ غلط ہے کہ میری Document نہ ہے جس پر میری ہسپتال Refer کیا گیا تھا۔ ایسا کوئی Recommendation نہ ہے کہ میڈیکل بورڈ کے خلاف کوئی اپیل کی تھی۔ Punjab Health Care Commission کے فیصلہ کے خلاف اپیل کی تھی۔

Dr. Arshad Ali Cheema, (Medical Superintendent Allied Hospital Faisalabad) appeared as DW2 who stated that he was working as Senior Registrar Orthopedic Department on 11.12.2012. Plaintiff-patient/Marriam Sajjad got admitted in hospital and on 17.12.2012 operation was conducted by Prof. Dr. Rasool Ahmad

Chaudhry. He was present during operation. In cross examination, he stated that:-

یہ بات درست ہے کہ اگر ایک سرجن کا آپریشن Cervical Ribs suggest کرے اور کسی اور چیز کا آپریشن کرے تو یہ Negligence کے زمرہ میں آئے گا۔۔۔۔۔ یہ درست ہے کہ اگر مریض ہوش میں ہو تو اسے آپریشن کی complications بتائی جاتی ہیں اور اس کی تحریری consent bھی لی جاتی ہے۔۔۔۔۔ یہ بات درست ہے کہ ڈاکٹر رسول چودھری صاحب نے Pain اور کسی اور کسی Complications کی وجہ سے آپریشن suggest کیا تھا۔ یہ بات درست ہے کہ آپریشن تھیز میں جس چیز کا آپریشن کرنے ہے اس کی فائل موجود ہوتی ہے۔ یہ بات صحیح ہے کہ آپریشن کے بعد بھی Cervical Rib کا Issue جوں کا توں موجود تھا۔۔۔۔۔ اگر Full Cut Chard Repair نہ ہوتا ہے۔ یہ درست ہے کہ نیچے والا دھر کا Senses ختم ہو جاتا ہے۔۔۔۔۔ اگر Spinal cord complete cut ہو جائے تو نچلا دھر پیکار ہو جاتا ہے۔۔۔۔۔ یہ بات درست ہے کہ جب ایک آدمی Disable ہوتا ہے تو اس کی Social life ختم ہو جاتی ہے۔۔۔۔۔ یہ بات درست ہے کہ اگر کوئی Maintenance اخراجات بڑھ جاتے ہیں۔۔۔۔۔ یہ بات درست ہے کہ پبلک ہسپتال کے کسی سرجن کی negligence کا غلط message public at large تک جاتا ہے۔۔۔۔۔ اگر ثابت ہو جائے تو مدعاہیہ اپنے damages لینے کی حدود negligence میں مجھے علم نہ ہے کہ رسول چودھری صاحب نے اپنی Health care commission کے سامنے تسلیم کی ہے۔

(emphasis supplied)

8. Before discussing the oral as well as documentary evidence, it is appropriate to firstly have a glance at the definition of “medical negligence” as defined in Section 19 (1) of the Punjab Healthcare Commission Act, 2010, which is reproduced as under:-

“19. Medical negligence.—(1) Subject to sub-section (2), a healthcare service provider may be held guilty of medical negligent on one of the following two findings:—

- (a) the healthcare establishment does not have the requisite human resource and equipments which it professes to have possessed; or
- (b) he or any of his employee did not, in the given case, exercise with reasonable competence the skill which he or his employee did possess.”

Further, “medical negligence” can be elaborated as under:-

1. Duty of Care: Healthcare providers have a legal and ethical duty to provide a reasonable standard of care to their patients.
2. Breach of Duty: Negligence occurs when a healthcare provider fails to meet the standard of care that is expected in the field. This can involve errors in diagnosis, treatment, surgery, medication administration, or communication.
3. Caution: The breach of the standard of care must be shown to have directly caused harm or injury to the patient. It must be proven that the negligence was a significant factor in the patient's adverse outcome.
4. Damages: To pursue a medical negligence claim, the patient must have suffered actual harm, such as physical injury, emotional distress, additional medical expenses, loss of income, or other damages.

Common examples of medical negligence include misdiagnosis or delayed diagnosis, surgical errors, medication errors, birth injuries, failure to obtain informed consent, and failure to properly monitor a patient's condition.

In this case, admittedly appellant/plaintiff Marriam Sajjad was admitted in Hospital due to arm pain and the respondent/ defendant diagnosed the issue of “cervical rib” and advised immediate operation of the patient with the warning that any delay whereof would spoil the arm and lungs of the plaintiff. As the surgery was suggested for cervical Ribs but the requisite surgery was not done rather during operation the Vertebrae T1, T2, T3 along-with spinal cord of the patient were damaged due to negligence of the surgeon/ respondent/ defendant; consequently, the lower portion of body of the appellant/ plaintiff could not move and since then she is not in a position to walk & stand without support. A board of expert Doctors was constituted in Hospital who submitted report (Ex.P-2) on 29.12.2012 declaring

that the respondent/ defendant committed medical negligence during process of surgery. The said report (Exh.P2) was never challenged by the respondent before any forum. For ready reference, operative part of report is reproduced as under:-

“Patient developed paraparesis post operatively. On 20.12.2012 Prof. Dr. Rasool Ahmed Ch. Called neurosurgeon Prof. Dr. Tariq Ahmed to visit patient on 20.12.2012. The neurosurgeon examined the patient and found that the power in Right lower limb was grade zero but pin sensation was present while the power of Left lower limb was 2 but pin sensation was absent. There was tenderness on palpation of upper thoracic spine so he advised MRI of thoracic spine which was conducted on the same day on 20.12.12. Meanwhile the patient developed respiratory distress and was shifted to main ICU on 22.12.2012 where she remained for 6 days and was shifted to private ward after clinical stability. Her neurological status remains the same.

To evaluate the cause of her neurological deterioration, Scot film of CT Scan, CT scan cervical and upper dorsal spine – axial, saggital, and reformatted images and IV contract was also given. MRI long and short axis with water and fat intensity and with IV contract also taken. According to report of Radiologist Dr. Anjum Mehdi Assistant professor of Radiology:

Both cervical ribs are present as seen in pre-operative films.

CT reformatted images show T1 (Drorsal vertebra) --more than 2/3rd of its body non visualized. No bony chip seen close to the vertebral body area

The T2 vertebral body not seen mostly on right side with few bony chips extending into the bony spinal canal.

The T3 vertebra body anterior endplate also having irregular shape.

MRI of cervical and dorsal spine show cord contusion at level of T2-T3 vertebral level with slight widening due to edema. T1 W hypointense and T2 W hyperintense area in front of the T1-T3 noted and with IV contrast showing no enhancement. Similarly CT with IV contract shows no enhancement of given area. To be correlated with clinical and surgical findings.

The board is of the view that there was inadvertent trauma to T1 and T2 vertebrae bodies alongwith contusion of the cord at the same level during the course of surgery, which is probably the cause of paraparesis of Miss Maryam.”

9. On the complaint of the plaintiff, the Punjab Healthcare Commission (hereinafter referred to as “Commission”) recorded evidence of the parties and also obtained opinions from different medical experts (Doctors) regarding the matter in issue. In the first expert opinion of Neurosurgeon [available on page No.7 of order of Punjab Healthcare Commission (Exh.P.3)], it is mentioned that the respondent was incompetent who committed deliberate negligence and he should be debarred from doing any further procedures of surgery relating to spinal cord and nerves. The said expert opinion was presented before the expert of Orthopedics field who also agreed with the said opinion. The relevant expert opinion as mentioned in Exh.P3 as well as the decision of the Punjab Healthcare Commission are reproduced as under:-

“OPINIONS OF THE EXPERTS:-

11. The Expert in the field of Neurosurgery opined as follows:

“I suggest that such cases should be deliberated by a group of experts. In my opinion, in this case there is incompetence on the part of surgeon. He should be debarred from procedures related to spine/spinal cord and nerves.”

The case was then presented to the Expert in the field of Orthopaedics, who opined as follows:

“I have gone through the entire case and read the statements of various experts. I agree with the findings of the committee constituted at PMC/Allied Hospital Faisalabad. That the complications have taken place inadvertently although the surgery was carried out in the major tertiary hospital with best possible environment. The mistake committed cannot be labeled as a neglect but it was due to misjudgment. The complainant needs to be compensated adequately according to the latest status of paralysis of the patient.”

The case was presented to another Expert in the field of Orthopaedics, who opined as follows:

“The problem has resulted from surgical error which has been admitted by the surgeon. The furthering of the case needs understanding that the

surgical error is a question of professional practise, not a criminal action. The surgeon may be stopped from operating on similar cases of cervical spine in the future. This will serve three purposes the professional punishment, lesson for other surgeons and satisfaction to the complainant.”

The case was then presented to another Expert in the field of Neurosurgery, who opined as follows:

“I have critically evaluated the record brought in front of me regarding the case of Miss Maryam Sajjad and the proceedings of the medical board constituted at PMC Faisalabad consisting of the following:-

<i>Prof Dr. Tariq Ahmad</i>	<i>Chairman</i>
<i>Prof Dr Shahzad Awais</i>	
<i>Dr. Syed Anjum Mehdi AP Radiology</i>	
<i>Dr. Javed Iqbal</i>	<i>Member</i>

I endorse the report of medical board that the condition of the patient worsened after the surgery because of the surgical error made by the surgeon Prof Dr. Rasul Ahmed Chaudhari. I further suggest that the said surgeon should be debarred from doing spinal surgery and the procedures like excision of cervical rib, in future.”

12. The said opinions were shared with both the sides vide letters dated 01-11-2013. They were instructed to submit their replies till 08-11-2013. It was also pointed out to them that the opinions of the Experts may/may not have any implication on the final decision of the case.

13. The Complainant submitted his comments on the experts' opinions on 07-11-2013, whereby the said opinions were reinforced by the Complainant, highlighting the negligence and absence of good faith, due care and attention. While relying on material downloaded from websites, that is, Mayoclinic, NHS/UK and patient.co.uk/doctor/ cervical ribs and thoracic outlet syndrome, it was also pointed out that the said surgery should have been the last resort and physiotherapy should have been the first option. It was added that no complications were explained to them. The patient was admitted for surgery on 11-12-2012, the same day without any second consideration. It was also pointed out that the experts through their opinions should not have expressed their views on the criminal liability or otherwise, in the case in hand, as this aspect fell within the competence of the Commission.

.....
17. After thorough deliberations and taking into consideration the record, the Board directs as follows:

a) The Healthcare Establishment to pay the fine of Rs. 100,000 in view of the fact that the said negligence as detailed above was committed at its Operation Theatre as well as keeping in view the fact that it failed to implement the basic requirements of the profession for obtaining an informed consent, on a proper Consent Form and also due to the fact that it also failed to ensure the practice of communicating with the patient and or her family about the complications of the surgery, in question.

b) It is strongly recommended to the Pakistan Medical and Dental Council to consider the removal of the name of Dr. Rasul A. Ch. from the Register(s) maintained by it.

c) The case of Dr. Rasul A. Ch. be referred to the Health Department, Government of Punjab;

- i. To take Disciplinary Action against him in view of his negligence /misconduct/inefficiency.
 - ii. To consider suspending all proceedings on processing his retirement case until the final outcome of the disciplinary proceedings.
- d) The Government of Punjab or the competent authority, as the case may be, may consider confiscation of all or any of the post-retirement monetary benefits due to Dr. Rasul A. Ch. in order to compensate the patient for further management of her morbidity.
- e) The Healthcare Establishment must immediately ensure the implementation of the Minimum Service Delivery Standards already provided to it by the Punjab Healthcare Commission.
- f) The Health Department, Government of Punjab may make efforts to ensure that the patient is adequately compensated monetarily and all possible medical treatment is made available to her, free of cost, within the country.

The above is the true & attested copy of the decision of the Board as taken during its meeting dated 17-12-2013.”

10. The respondent/ defendant while appearing as DW1 admitted that he advised the appellant for operation of Cervical Ribs and admitted her in Hospital for the operation of Cervical Ribs but in this regard he did not seek any instruction or consultation with the Neurosurgeon. However, after operation when the appellant voiced complaint regarding numbness (paralysis) of her lower portion of body then the Neurosurgeon was engaged who opined the permanent loss of control over the lower portion of the body due to negligence of the surgeon/ respondent. It is important to mention here that as per MRI and CT scan reports, the Cervical Ribs were intact as it were before surgery. Thus, it is proved on record that the respondent committed negligence in the surgery of the appellant.

11. Under the Constitution of Islamic Republic of Pakistan, 1973, Chapter-I (Articles 8 to 28), a human life is given extraordinary sanctity and importance and same cannot be left vulnerable to mischief of the negligent. The Hon'ble Supreme Court of Pakistan in Punjab Road Transport Corporation's case¹ has observed that promotion of law of tort is imperative so that the people must understand that they could not live as a nation without performing their duties within the framework of law and held that "*11. The Constitution of a country is a kind of social contract which binds people, society and a State. The terms of the contract foster feelings of interdependence of belonging to an entity and of adherence to law. An honest commitment to the goals set out in the Constitution ensures promotion of nationhood and stability of the system. In view of Article 4 read with Article 5(2) of the Constitution, it is the duty of each and every organ of the State and people of Pakistan to work within the framework of Constitution and law as law laid down by this Court in the following judgments:-- (1) Ch. Zahoor Elahi's case PLD 1975 SC 383 and (2) Zahid Rafique's case PLD 1995 SC 530.*

12. Our Constitution contains Chapter I relating "Fundamental Rights" in which life of human being is given due importance. It requires everyone to work for the welfare of the people of

¹ Punjab Road Transport Corporation Vs Zahida Afzal & Others (2006 SCMR 207)

Pakistan but a person who is violating the law and Constitution works against the welfare of the people that is why it is high time to promote the law of tort so that the people must understand that we cannot live as a nation without performing our duties within the framework of law. As in the present admittedly the driver had driven the bus in violation of the mandatory provisions of Motor Vehicle Ordinance, 1965 and rules framed thereunder thus, causing fatal injuries to the innocent citizens.

13. It is pertinent to mention here that mere framing of law does not provide good result unless the law is strictly implemented by all the sections of the society in letter and spirit without fear, favour and nepotism as envisaged in "Sura-e-Baqra" of Holy Qur'an. To achieve the goal of ensuring every citizen and organ of the State on a right path the nation, as a whole, has to honour the commitment in terms of the Constitution and law. One of the modes to achieve this goal is to file a suit for damages against the offenders by the aggrieved persons. It is the duty of the members of the Bar Associations and Bar Council to educate the people and to file suits for damages against the offenders apart from the criminal proceedings. It is also the duty and obligation of media to provide to cultivate awareness of rights specially law of tort which will ultimately bring/compel every authority and functionary including the Chief Executive of the country to work within the framework of law and Constitution." In Dr. Atta

Muhammad Khanzada's case², an eye of the patient was damaged by Eye Specialist/Doctor. The suit for damages was instituted and same was decreed under the Tort and amount of costs was also granted and it was held that "*11. There is also no force in the contention that the respondent was not entitled to claim or get damages as the operation was conducted with his consent. The respondent had admittedly consented to the operation but his? consent is immaterial for the simple reason that the consent of a patient or his relatives does not absolve the doctor from performing his professional duties with care and caution. In this context the principles stated in the following excerpt from Halsbury's Laws of England, which were affirmed by the Supreme Court of India in Dr. Laxman Balkrishna Joshi v. Dr. Taimbak Bapu Godbole (AIR 1969 SC 128) may be reproduced advantageously;-- "22. Negligence: duties owed to patient --A person who holds himself out ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give and duty of care in his administration of that treatment. A breach of any these duties will*

² Dr. Atta Muhammad Khanzada Vs Muhammad Sherin (1996 CLC 1440) [D.B]

support in action for negligence by the patient." In Dr. Laxman Balkrishna Joshi's case³, in an accident, a patient was entertained by a surgeon but due to negligence, the body of the patient was spoiled and the Indian Supreme Court held that "*11. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires:-*

(of. Halsbury's Laws of England, 3rd ed. vol. 26 p. 17). The doctor no doubt has a discretion in choosing treatment which he proposes to give to the patient and such discretion is relatively ampler in cases of emergency. But the question is not whether the judgment or discretion in choosing the treatment he exercised was right or wrong, for, as Mr. Purshottam rightly agreed, no

³ Dr. Laxman Balkrishna Joshi Vs Dr. Trimbak Bapu Godbole & Another (1969 AIR (SC) 128)

such question arises in the present case because if we come to the same conclusion as the High Court, viz., that what the appellant did was to reduce the fracture without giving anaesthetic to the boy, there could be no manner of doubt of his being guilty of negligence and carelessness. He also said that he was not pressing the question whether in this action filed under the Fatal Accidents Act (XIII of 1855) the respondents would be entitled to get damages. The question, therefore, is within a small compass, namely, whether the concurrent findings of the trial court and the High Court that what the appellant did was reduction of the fracture without giving anaesthetic to the boy and not mere immobilisation with light traction as was his case, is based on evidence or is the result of mere conjectures or surmises or of misunderstanding of that evidence.” In State of Haryana’s case⁴, it is held that every doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill as implied undertaking and held that “6. The trial Court as also the lower appellate Court both recorded concurrent findings of fact that the sterilisation operation performed upon Smt. Santra was not ‘complete’ as in that operation only the right Fallopian Tube was operated upon while the left Tube was left untouched. The Courts were of the opinion that this exhibited negligence on the part of the Medical Officer who performed the operation. Smt.

⁴ State of Haryana vs. Smt. Santra (2000 AIR (SC) 1888)

Santra, in spite of the unsuccessful operation, was informed that sterilisation operation was successful and that she would not conceive any child in future. The plea of estoppel raised by the defendants was also rejected. The trial Court has recorded the following findings on the question of negligence :- "The birth of the female child by plaintiff Smt. Santra after operation for sterilisation is not disputed and the case of the deft. is that there was no negligence and carelessness on the part of the deft. but on going through the documents placed on the file as well as testimony of PWs that the medical officer who conducted the operation has threw the care and caution to the winds and focussed attention to perform as many as operations as possible to build record and earn publicity. It is in such setting that a poor lady obsessed to plan his (her) family, was negligently operated upon and treated and left in the lurch to suffer agony and burden which he was made to believe was avoidable. Therefore, the act of the DW2 Dr. Sushil Kumar Goel shows that he did not perform his duty to the best of his ability and with due care and caution and due to the above said act, the plaintiff has to suffer mental pain and agony and burden of financial liability." 9. Negligence is a 'tort'. Every Doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill. This is what is known as 'implied undertaking' by a member of the medical profession that he would use a fair, reasonable and

competent degree of skill. In **Bolam v. Friern Hospital Management Committee, 1957(2) All England Reporter 118**, McNair, J. summed up the law as under: "The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he conforms with one of these proper standards, then he is not negligent". 11. In two decisions rendered by this Court, namely, **Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbole and another, AIR 1969 Supreme Court 128** and **A.S. Mittal v. State of U.P., AIR 1989 Supreme Court 1570**, it was laid down that when a Doctor is consulted by a patient, the former, namely, the Doctor owes to his patient certain duties which are (a) a duty of care in deciding whether to undertake the case; (b) a duty of care in deciding what treatment to give; and (c) a duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his Doctor. In a recent decision in **Poonam Verma v. Ashwin Patel and others, 1996(4) SCC 332** where the question

of medical negligence was considered in the context of treatment of a patient, it was observed as under: “40. Negligence has many manifestations - it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, wilful or reckless negligence or Negligence per se, which is defined in Black's Law Dictionary as under: Negligence per se : Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.” In Darnley’s case⁵, the Supreme Court of United Kingdom declared that even the duty of care is also needed from the staff of the hospital with regard to information given to the patient on which basis the patient suffers loss, as such patient who was given wrong information by the staff of the hospital is entitled for damages and held that “29. This reasoning, however, fails to take account of the effect of the

⁵ Darnley Vs Croydon Health Services NHS Trust (2019 SCMR 143)

misleading information with which the appellant was provided and of three critical findings of fact made by the trial judge. First, the judge found that, if the appellant had been told that he would be seen within 30 minutes, he would have stayed in the waiting area and would have been seen before he left. He would then have been admitted or told to wait. He would have waited and his later collapse would have occurred within a hospital setting. Secondly, the judge found that the appellant's decision to leave was made, in part at least, on the basis of information provided to him by the receptionist which was inaccurate or incomplete. Thirdly, the judge found that it was reasonably foreseeable that a person who believes that it may be four or five hours before he will be seen by a doctor may decide to leave, in circumstances where that person would have stayed if he believed he would be seen much sooner by a triage nurse. The conclusion of the majority of the Court of Appeal on this point seems to me to be inconsistent with these findings of fact. Far from constituting a break in the chain of causation, the appellant's decision to leave was reasonably foreseeable and was made, at least in part, on the basis of the misleading information that he would have to wait for up to four or five hours before being seen by a doctor. In this regard it is also relevant that the appellant had just sustained what was later discovered to be a very grave head injury. Both the appellant and Mr Tubman had told the

receptionist that the appellant was really unwell and needed urgent attention. The appellant told her that he felt as if he was about to collapse. He was in a particularly vulnerable condition and did, in fact, collapse as a result of his injury within an hour of leaving the hospital. In these circumstances, one can readily appreciate how the judge came to his conclusion that the appellant's departure was reasonably foreseeable.

30. The trial judge made a further finding of fact that had the appellant suffered the collapse at around 21:30 whilst at the Mayday Hospital, he would have been transferred to St George's Hospital and would have undergone surgery earlier with the result that he would have made a very near full recovery.

31. In these circumstances, the case that the appellant's unannounced departure from the A & E department broke the chain of causation is simply not made out.”⁶

12. As regard the objection/argument of learned counsel for the respondent that the suit of the appellant is not competent as the remedy of complaint has already been availed before the Punjab Healthcare Commission, suffice it to say that the Punjab Healthcare Commission Act, 2010 has been promulgated to improve the quality of healthcare services. The functions and powers of the Punjab Healthcare Commission have been given in

⁶ Montgomery Vs Lanarkshire Health Board (2015 SCMR 663) & Islamic Republic of Pakistan through Secretary, Ministry of Railways & Others Vs Abdul Wahid & Others (2011 SCMR 1836)

Section 4 of the Act ibid and sub-section (7) of Section 4 of the Act ibid deals with the complaint of an aggrieved person. For ready reference, sub-section (7) is reproduced as under

“(7) Notwithstanding anything contained in any other law, the Commission may—

- (a) on a complaint by any aggrieved person; or
 - (b) on a complaint by any aggrieved healthcare service provider;
- and shall—
- (c) on a reference by the Government or the Provincial Assembly of the Punjab; or

(d) on a motion of the Supreme Court of Pakistan or the Lahore High Court made during the course of any proceedings before it,

undertake investigation into allegations of maladministration, malpractice or failures on the part of a healthcare service provider, or any employee of the healthcare service provider.”

The Punjab Healthcare Commission can investigate into the allegations of malpractice or failure on the part of healthcare service provider and can announce order in this regard but it has no jurisdiction to grant damages to a person affected by such service whereas said relief can only be granted by the Civil Court if an aggrieved person proves his case. Furthermore, under the Act ibid even no bar has been imposed upon an aggrieved person to approach Civil Court for claim of damages against any healthcare service provider. As such the argument of learned counsel for the respondent have no force and same is repelled.

13. The active medical negligence of the respondent has stood established from the record. Here the main issue before this Court

is that what is litmus or standard or mode for assessment of compensatory damage in medical negligence? The cases related to medical malpractice are dealt with by courts under “Law of Torts”. Pakistan follows English Law for deciding the cases of medical malpractice. The claims of medical malpractice are mostly brought in respect of death, personal injuries and financial loss suffered due to the negligence. The principles applied for the calculation of damages in medical negligence cases are similar to one applied in general cases of negligence in tort. While granting claim for damages the court of law and equity normally adhere to the following principles:

- i) Reasonable and fair monetary compensation for the injury caused.
- ii) Small amount of damages can be granted under the head of pain and suffering.
- iii) Loss of Amenity includes the loss of activities of claimant, his job satisfaction, hobbies, and recreational activities. Court will consider all these losses during award of damages. This will include in the damage even if the patient is unconscious and does not realize the loss of all these activities.
- iv) Medical Expenses: A patient can recover medical and other expenses as damages.⁷ Likewise, damages can be granted for traveling costs and additional housing or adapting accommodation for the special needs of the patient.⁸
- v) Loss of Earning must be estimated for two periods. First: the lost incomes due to the medical malpractice

⁷ Herring, Medical Law and Ethics, 124

⁸ Jones, Medical Negligence, 1001-1002

till the date of estimation. Secondly, future loss of earnings. Calculating the prospective loss of earning is a difficult question for the court.⁹

- vi) Pecuniary Loss: A patient who is a victim of medical negligence usually suffers from pecuniary cases such as, medical expenses, traveling expenses, the cost of equipment bought because of the injury, loss of earning, future loss of earning and cost of hiring someone else for performing chores which the patient is no longer able to perform due to the injury caused to him because of medical negligence.
- vii) Pain and Suffering & non pecuniary loss:- A patient can be awarded damages for the pain and suffering as a result of injury because of medical malpractice. If patient faces humiliation, discomfort or any part of his body got disfigured or his life expectancy has been significantly reduced because of the negligent behavior of the medical practitioner, he is entitled to damages. Similarly, if a patient develops any psychiatric condition due to the injury, it will be reflected in the award of damages.

14. From the above discussion, it is crystal clear that the respondent/defendant committed sheer medical negligence while performing procedure of surgery upon the appellant/plaintiff due to which the lower portion of body of the appellant/plaintiff has become paralyzed and for rest of life she is unable to stand and walk without any support of others. The appellant/plaintiff is not in a position to move freely, perform function and live a normal life, which misfortune though cannot be undone, as the loss caused to the appellant/plaintiff cannot be compensated in terms

⁹ [2003 EWCA Civ 528 and [1980] A.C 138

of the money, however by granting reasonable damages, she can be compensated to some extent. Thus this Court has to fairly and justly determine the compensation by taking in view all the facts and circumstances of the matter at hand. The trial Court without properly appreciating the material evidence on the record has granted lesser amount of damages to the appellant/plaintiff as Rs.50,00,000/- which is liable to be enhanced to Rs.1,00,00,000/-.

15. Resultantly, this appeal [No.70634/2023] is hereby **allowed**, the judgment & decree dated 12.09.2023 passed by the trial Court is modified in the manner that the damages granted by the trial Court as Rs.50,00,000/- are enhanced to the tune of Rs.1,00,00,000/- (rupees one crore) with costs throughout. The connected appeal [No.74489/2023] filed by the respondent/defendant is hereby **dismissed**.

(Masud Abid Naqvi)
Judge

(Ch. Muhammad Iqbal)
Judge

Announced in open Court on 01.02.2024.
Approved for reporting.

Judge

Judge