**Title: Doctors’ voyage from Civil Court to the Ethical Committee of MCI- Report of three cases**

**Abstract**

Medical malpractice is professional negligence by act or omission by a health care provider in which the treatment provided falls below the accepted standard of practice and causes injury or death to the patient. The claims of medical malpractice are usually processed as civil torts for to be paid to a person as compensation for loss or injury.

Damages are categorized into compensatory (or actual) damages, and punitive damages. Compensatory damages are further categorized into special damages, which are economic losses such as loss of earnings, property damage and medical expenses, and general damages, which are noneconomic damages such as pain and suffering and emotional distress.

Generally, punitive damages, which are also termed exemplary damages are awarded in order to reform or deter the defendant and similar persons from pursuing a course of action such as that which damaged the plaintiff. Punitive damages are awarded only in special cases where conduct was egregiously invidious and are over and above the amount of compensatory damages, such as in the event of malice or intent. Great judicial restraint is expected to be exercised in their application.

In India, the Registered Medical Practitioners are governed by the Codes of Conduct laid down by the Medical Council of India. The MCI does not explicitly define what shall constitute professional misconduct, rather, broadened the ambit of misconduct to such an extent that, anything that is against the codes of conduct is included in the list of professional misconduct. Accordingly, any negligence suit also will qualify to be tried as a case of professional misconduct.

This paper will discuss through three of the court cases where penalties for professional misconduct have been awarded by the MCI for essentially negligence suits, but the decisions were strongly challenged in various Courts.

*Keywords: medical negligence, professional misconduct, medical council of India, medical ethics*

**Introduction**

In 1894 Lord Justice Lopes remarked that “If a doctor, in pursuit of his profession has done something which is reasonably regarded as disgraceful or dishonourable by professional brethren of good repute and competency, then it shall constitute professional misconduct”.1 Accordingly, adultery, drunk and disorderly during practice, criminal abortion/ Sex determination tests, using of touts or agents to allure or procure patients, conviction by a Court for offence involving moral turpitude, etc., constituted the infamous list of professional misconduct.

With the Gazette notification of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, the scenario appears to be changed. At the time of registration, each applicant is given a copy of a declaration by the Registrar concerned and the applicant shall read and agree to abide by the same. The 11th clause of the said declaration reads “I shall abide by the code of medical ethics as enunciated in the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002”.2 The regulation also gives a list of the acts of commission or omission on the part of a physician that shall constitute professional misconduct rendering him/her liable for disciplinary action. It further declares that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action. The MCI does not explicitly define what should constitute professional misconduct, rather, broadened the ambit of misconduct to such an extent that, anything that is against the codes of conduct can be included in the list of unethical acts. As a result, the cases that should have been tried for damages are instead heard in the disciplinary committee of Medical Council of India.

**Delhi High Court- Dr Alka Gupta vs Medical Council of India3**

Mr. Aman Sarna filed an FIR in Saraswati Vihar P.S. that his wife Ms Nikita delivered a male child through LSCS under the care of Dr Alka Gupta of Max Hospital. Due to wrong treatment & negligence, his wife died. The Police Commissioner asked the Delhi Medical Council to see for any evidence of negligence. The DMC after examining the hospital records, clarified that there is no negligence. The father of the deceased being dissatisfied with the decision preferred an appeal under Regulation 8.7 and 8.8 of the MCI Regulations, 2002. The appeal was considered by the Ethics Committee of the MCI, and found Dr Alka guilty of negligence. Show-cause notice was served against the two doctors for charges of professional misconduct

**Grounds for appeal (by Dr Alka in Delhi High Court)**

* The original complaint was filed by the husband, who had neither any objection to the opinion rendered by the DMC nor, had he preferred an appeal to MCI
* The appeal had been filed by the father of the deceased. The appeal was not maintainable, as he was neither a class-I heir as per the Hindu Succession Act nor the original complainant.
* Whether the MCI Ethics Committee has the jurisdiction to deliberate on this issue
* The MCI and the SMC are the bodies to deal with Professional Misconduct not Negligence
* The power to grant and suspend a licence of a doctor is vested with the SMC; MCI is only an appellate body.

**The High court dismissed the appeal filed by Dr Alka on the following grounds**

* 1. It was through Regulations 7 and 8 of the MCI Regulations 2002, under which MCI claims to have exercised the jurisdiction. The relevant clauses are referred to hereinafter:
  2. The following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action; and
  3. It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action.
  4. Any person aggrieved by the decision of the SMC on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the said Medical Council.

**2.4 of MCI regulation- “**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. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. A registered medical practitioner shall not wilfully commit an act of negligence that may deprive his patient or patients from necessary medical care.”

**Dr. Rupa Basu (Banerjee) vs The State of West Bengal4**

Dr Rupa received a memo from the West Bengal Medical Council containing the following charges as she was found prima facie guilty of infamous conduct in professional respect.

The articles of charges are quoted below:-

* That you attended on Smt. Madhumita Baral during her antenatal period and admitted her in the New Life Maternity Hospital at Chanditala, Hooghly and performed an elective Caesarean Section Operation (L.U.C.S.). The operation was done by you with Spinal Anaesthesia though you have written as General Anaesthesia in the discharge certificate.
* That knowing fully well that this pregnancy was a post- Caesar you did not care to take proper precaution during the operation and had taken an unqualified person to assist you during the operation.
* That you did not care to take one Paediatrician in the operation theatre during the operation and thereafter for proper care of the baby.
* That you have performed Tubectomy at the time of L.U.C.S. though the same was not indicated.
* That because of your wrongdoings the baby has died of complications of birth asphyxia.
* The Registrar, West Bengal M.C. informed Dr Rupa that, after due enquiry the West Bengal Medical Council had decided to 'warn' you for professional misconduct.

After 5 months, she received a communication from the department of H& FW, Govt. of West Bengal with direction to appear before the Principal Secretary of the said Department for personal hearing in the matter of an appeal under Section 26 of the Bengal Medical Act, 1914. After conclusion of hearing, the Principal Secretary has decided that the name of the petitioner be removed by the West Bengal Medical Council for a period of six months.

Dr Rupa Filed a suit in Calcutta High Court with following complaints:

* That the said Principal Secretary acted as appellate authority in the instant case in accordance with the provisions of Section 26 of the Bengal Medical Act, 1940 which has been impliedly repealed.
* That the powers of the appellate authority against the orders of a SMC is now vested with the MCI in terms of the provisions of rule 8.8 of the MCI Regulations, 2002.
* That the Principal Secretary is a member of the Indian Administrative Service having no experience in the medical profession and therefore he cannot and should not sit in appeal to decide the report of the Ethical Committee consisting of highly skilled professionals who are the competent authority to decide and judge the real nature of infamous conduct in any professional respect committed by a doctor.

The writ petition was dismissed by the High Court with the Judgment “there is no illegality, violation of the principles of natural justice and want of jurisdiction in the impugned order of the Principal Secretary to the Government of West Bengal, H& FW which should be interfered with by the Writ Court to prevent any miscarriage of justice and abuse of the process of law”.

**Dr Ramcharan Thiagarajan vs Medical Council of India5**

* The petitioner is a Consultant in Surgical Gastroenterology and Laparoscopic Surgery. He is also a multi-organ transplant surgeon and was working with M/s Fortis Hospital, Bangalore. Smt. Seema Rai, was said to have been diagnosed with severe diabetes and end-stage renal failure, was undergoing dialysis treatment at Fortis Hospital. She was also said to have been registered with the Zonal Co-ordination Committee of Karnataka "ZCCK", for cadaver kidney transplantation.
* Fortis Hospital was intimated by ZCCK that a Kidney is available for transplant and no significant recipient is also not present. Also, Pancreas is available from the same cadaver donor, and the patient being a severe diabetic may take the benefit.
* After both the transplant operations, patient developed disseminated intravascular coagulation, and despite treatment died on the 4th post-op day.
* The Husband of the deceased filed a complaint before the JP Nagar PS U/S 304 IPC against the said doctor and a nephrologist.
* The husband also Lodged a complaint to the Karnataka Medical Council (KMC).
  1. The KMC held that there was no case made out indicating negligence or violation of the code of Medical Ethics - on the part of the physicians.
* The aggrieved husband filed a suit in the State Consumer Protection Disputes Redressal Commission (KSCDRC) complaining of medical negligence and has claimed damages quantified at Rs.84.56 lakh.
* Lodged a complaint with the Department of H&F.W., seeking action against the hospital and the doctors.
  1. On a preliminary enquiry, the Ministry found that the treatment given to the patient was appropriate and that no fault could be found with the hospital, the doctors or its staff.

The Appropriate Authority under the provisions of the Transplantation of Human Organs and Tissues Act, 1994 after conducting a detailed enquiry, gave its finding to the effect that the primary allegation as to M/s Fortis Hospital not being authorized to conduct multi-organ transplantations, was not tenable and gave the hospital a clean chit.

* The husband approached the Lokayuktha with a complaint against the Chairman of the aforesaid Appropriate Authority. The Lokayuktha, in turn, is said to have called for a report of a Technical Committee, consisting of three doctors, who were to examine the opinion of the Appropriate Authority.
* Upon recommendation of the above committee, the appropriate Authority had issued a show cause notice to the hospital and ultimately reversed its earlier opinion and held that M/s Fortis hospital was not authorized to conduct transplantation of pancreas and recommended for cancellation of the license granted to the hospital for transplantation of human organs and cancelled the certificate of registration
* The respondent challenged the order passed by the KMC - exonerating the petitioner of any act of negligence before the MCI. The said appeal is said to have been allowed and the name of the petitioner was ordered to have been removed from the Indian Medical Register for a period of one year, holding that the petitioner operated in a Hospital, which did not possess a valid license issued by a competent authority for conducting surgery for pancreas transplantation.

The Hospital is said to have challenged the Order passed by the Appropriate Authority by way of an appeal before an Appellate Authority, the Secretary, Department of Health and Family Welfare, Government of Karnataka, and finally lodged a case in the High Court of Karnataka.

**The High Court dismissed the appeal of the petitioners, but reserved that:**

* Whether the MCI possessed the jurisdiction to impose the punishment on the petitioner in the appeal filed by the third respondent?
* Whether there is a remedy of appeal available to the petitioner against the impugned order?
* Whether the order of the MCI can be sustained as being in accordance with principles of law and justice?
* Whether the Members of MCI Ethics Committee are qualified enough to carry forward the Principles of Natural Justice?

**Conclusion**

Professional misconduct, in most instances, imports an element of mens rea. Negligence cases, on the other hand, is conspicuous by the absence of mens rea. The punishment for former group is warning or professional death sentence, whereas the latter is governed by the law of torts, and is generally awarded through damages.

The authors believe that the Indian Medical Council (Professional Conduct, Etiquette and Ethics Regulation, 2002” needs urgent amendment, otherwise, each negligence suit where a doctor has to pay compensation will also qualify for a hearing in the MCI Ethical committee for removal of his name from the Indian Medical Register.

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