

Role of Indian Judiciary in Cases of Medical Negligence

Annu Bahl

(Research Scholar), Assistant Professor, School of Legal Studies, Noida International University.

Dr. Rama Sharma

HOD, School of Legal Studies, Delhi Metropolitan Education.

Abstract:

Instances of negligence in the medical profession are not a new incident. A case of Medical negligence occurs when a medical practitioner is negligent in treating a patient or when he fails to take proper action on a patient's medical condition. Thus, medical negligence is a valid cause for a medical negligence claim and defaulters are punishable under applicable laws. The issue of Medical Negligence is tremendously important factor for patients as Medical Negligence is being committed in all over the world every day. Traditionally, the standard of care in medical negligence has provided significant scope for external assessment of clinical decision-making. It has been provided under the Bolam test that while determining the medical negligence, the courts see this basically as a matter for the medical profession and which has to be resolved by expert opinion with minimal court scrutiny. In recent times, courts have become more willing to probe such testimony and challenge the credibility of medical experts and made it very clear that a medical man has to show greater skill and knowledge. Closer scrutiny of these decisions is the more welcome in the light of current concerns. This article deals with the legal issues and challenges in the field of medical negligence.

Key Words:

Medical Negligence; Medical Profession; Legal Issues and Response of Judiciary

Introduction

The word 'negligence' may be used in different ways. Dictionary meaning of term 'Negligence' is 'Lack of Proper Care'. Negligence may mean 'carelessness' but this is not a legal meaning. Carelessness is a common meaning based on the experience. In the absence of legal duty¹, there can be no negligence in the legal sense and no legal consequences too.

According to Lord Baron Alderson² "Negligence is the omission to do something which a sensible man, guided upon those considerations which usually regulate the conduct of individual affairs, would do or doing something which a sensible and reasonable man would not do." This clarification raises question as to "sensible man" and to analyze a person as reasonable man. It cannot be viewed as a practical meaning in terms of law. Mere negligence in itself does not give a cause of action. To give a cause of action, there must negligence which amounts to a breach of duty towards the person alleging negligence.

Meaning of Medical Negligence:

The term 'medical negligence' is difficult to analyze. Negligence in medical cases always relates to a meticulous fact-situation, and what is decided in one case is usually help or may not help in deciding subsequent disputes. It is

1 Jeeth Kumari Poddar v Chittagong Engineering and Electric Supply Company Limited, ILR(1964) 2 Cal 483, followed in Narasingha Prasad Rakshit v Commissioner, Bhadreswar Municipality, (1969) 73 Cal WN 88.

2 Blyth v Birmingham Waterworks Company (1956) 11 exch 781.

also very difficult to expect the conclusion of the negligence in particular case, proving the case with the help of uncertain conditions, medical documents and findings of fact.

In terms of the concept of 'duty of care', professional negligence in case of doctors has been described as "lack of reasonable care and skill "whereby the health or life of a patient. Every doctor will be bound to treat ill person who visits him with the request of medical assistance. He is bound to exercise due care and caution, utilizing his professional knowledge and skill for the welfare of the patient. The question of medical negligence was considered by the court in the context of treatment of a patient, as it was observed as³ "Negligence has many manifestations- it may be vigorous negligence, collateral negligence, relative negligence, synchronized negligence, constant negligence, criminal negligence, unpleasant negligence, harmful negligence, active and passive negligence and irresponsible negligence"

The breach of any of those duties is what is known as "negligence" for which the patient gets a right of action for damages or on the basis of which the patient may recover damages from his doctor.⁴ A more appropriate and accepted definition can be found in a famous Bolam's case⁵ wherein negligence means "failure to act in accordance with medical standards in vogue which are being practiced by an ordinarily and reasonably competent man practicing the comparable art", where there are more totally appropriate standards, if the

medical man conforms with any one of those standards, then he is not negligent.⁶ Therefore medical negligence maybe described as want of reasonable care and skill or willful negligence on the part of a doctor in respect to acceptance of a patient, history taking, examination, diagnosis, investigation, treatment (medical or surgical) etc., resulting in injury or damage to the patient⁷.

Issues:

A medical practitioner is not guilty of negligence if he has acted in accordance with the practice accepted as proper by the opinion of the peer panel of the medical body. The common law does not demand the highest standards of care and skill even for highly specialized kind of work within the medical profession. It is sufficient if the practitioner exercises the ordinary skill of an ordinary competent man exercising that particular art.

In a claim against medical negligence it was not sufficient to show that the patient suffered in some way. It had to be proven that the suffering or death of the patient was the result of negligence on the part of the doctor. The Bombay High Court held⁸ that in an action for negligence against a doctor, the patient has to prove:

- that the medical practitioner had a duty to take reasonable care towards the patient to avoid the damage complained of ;
- that the medical practitioner has committed a breach of duty; and
- That the violation of duty was the real

3 Poonam Verma v Ashwin Patel (1996)4 SCC 332; AIR 1996 SC 2111 at para 41.

4 Halsbury's Laws of England, 3rd edition Vol 26 p 17 reiterated and affirmed by the Supreme Court of India in classical cases of L.B. Joshi v Dr.T. P. Godble AIR 1959 SC 128; A.S.Mittal v State of Uttar Pradesh (1989)3 SCC 223; 1989 SCC (Cri) 539; AIR 1989 SC 1570.

5 Bolam v Friern Hospital Management Committee, (1957)2 All ER 118; (1957)1 WLR 582.

6 House of Lords in Whitehouse v McGregor, (1981)1 All ER; (1981)1 WLR 246 (HL); Maynard Vs West Midlands Regional Health Authority (1985)1 All ER 635; (1984)1 634(HL) and Sidaway v Bethlem Royal Hospital (1985)1 All ER 643; 1985 AC 871; (1985)2 WLR 480(HL).

7 Dr. Jagadish Singh and Bhushan Vishwa Medical Negligence and Compensation, Bharat Law Publications, 2nd edition 2002, p 87

8 Philips India Ltd. v Kunju Punnu 1975 MLJ 792

cause of the damage.

In Medical Negligence cases there are many crucial questions which have to be proved in the court but standard of care has not been defined elsewhere. The standard of care involves complications and it deserves a brief discourse on concepts of rashness and negligence before proceed to the standard or degree of negligence. In these circumstances a doctor has to be very careful while attending patient in critical condition or doing a surgery. Doctors have to maintain proper hygiene in and around their hospitals and in equipments also.

The provisions of law of tort and law of contract are wide enough to cover general negligence cases but they do not cover completely the issues rise in the medical negligence. It is very difficult to prove the charge of negligence, beside time consuming, cost of litigation. After the emergence of the Consumer Protection Act, 1986, the consumer can seek remedy by filing a simple complaint against the professional for monetary compensation in the consumer forum. We have to discuss on following issues also:

- Whether a patient can be considered as a consumer within the purpose of the Consumer Protection Act?
- Whether the services rendered by a doctor are within the definition of service.
- Does the negligence of the doctor constitute deficiency in service?
- What is the extent of the liability of a medical practitioner under the Consumer Protection Act?

A review of cases decided by the courts also reveals that that the scope and ambit of the liability of professionals has been widened considerably enabling the patient to take recourse to the civil court seeking appropriate damages. One of the remedies provided by the Consumer Protection Act is payment of money as compensation to the consumer for any loss

or injury suffered by the consumer due to negligence of the opposite party.⁹ The accountability of the medical professionals under the Consumer Protection Act 1986 is still debatable issue as the Act does not clearly state that health service is a “service”¹⁰ and the patient is undoubtedly a “consumer.”¹¹ The courts do not consider the petitions of a patient who avails of free service either in the government hospital or charitable institution for remedies under the Consumer Protection Act. The scope of the Consumer Protection Act 1986 has to be defined for medical professionals or health providers and medical services obtained at the government hospitals/ health centers / dispensaries on payment of mere nominal charges are also to be included in the provisions of this act..

Response:

Negligence can be described as failure to take suitable care, as a result of which grievance ensues. Carelessness is not culpable or a ground for legal liability except in those cases in which the law has imposed the duty of care. The medical profession is one such section of society on which such a duty has been imposed in the strictest sense. It is not sufficient that the doctor acted in good faith to best of his or her judgment and belief.

Very often in a case of medical negligence a plea has been taken that it is a case of bona fide mistake which under certain circumstances may be excusable. Hon’ble Supreme Court held¹² that a mistake which may identical to negligence cannot be pardoned. Gross medical fault will always result in a finding of negligence. Use of incorrect drug or wrong

9 Clause (a) of Section 14 of the Consumer Protection Act, 1986.

10 Section 2(1) of the Consumer Protection Act, 1986.

11 Section 2(1) (d) of the Consumer Protection Act, 1986.

12 Spring Meadows Hospital v Harjo Ahluwalia 1998 4 SCC 39

method during the course of operation will frequently lead to the imposition of liability.

The Right to Health and Health care is a human right and has been included under Article 21 of the Indian Constitution. However, the judiciary has not really been active in giving a direction in implementing this right. Under Indian Penal Code 1860 certain sections also providing the remedies in case of medical negligence. Till the advent of Consumer Courts / Forums, there were hardly any cases of medical negligence. We have yet to develop our own procedure while dealing with the medical negligence cases. It has been observed that when there is a question of Medical Ethics, the matter is referred to the Medical Council but transparency and proceedings at the Courts are proverbially slow.

The Andhra Pradesh High Court held¹³ that it was the duty of the hospital to check whether the blood was infected or not, and the lack of proper equipment to detect the virus was not an excuse. The high court went beyond the point of medical negligence and laid down important guidelines for the effective implementation of the programme to curb the spread of the virus and to deal with the people who have been tested positive of HIV.

As regards criminal liability of medical practitioners, Supreme Court in a judgment¹⁴ in the case of curtailed criminal proceedings against medical negligence to incidents of gross negligence. It was held that a medical practitioner cannot be held punishable for every mishap or death during the course of medical treatment. There should be no criminal liability where a patient's death results due to an accident. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him

criminally liable¹⁵.

Medical negligence gives rise to civil and criminal liability both. An aggrieved person can claim compensation either through a civil suit or a complaint lodged with consumer forum. Since the enactment of Consumer Protection Act, 1986 cases of medical negligence have been frequently increasing. For quite some time after the passage of the Consumer Protection Act, furious debate was raging whether it at all applies to doctors, hospitals and nursing homes and if so under what situations. The Supreme Court finally set¹⁶ at rest this controversy and held that proceedings under the Consumer Protection Act are summary proceedings for speedy redressal and the remedies are in addition to private law remedy.

Conclusion:

Cases of medical negligence are growing speedily especially in the consumer courts. However getting fellow doctors to testify even in cases which are self evident is a very difficult task. With the latest decisions of the Supreme Court in matters concerning criminal negligence, it is becoming more difficult for doctors to be prosecuted under the criminal law without evidence-based on medical literature.. Though no such accurate standard has emerged by which a physician can avoid liability with certainty. While consulting with the patient, it is the duty of the doctor to explain the method of treatment and the risks involved in a language and manner that the patient can understand. Merely paying lip service to the law does not absolve the doctor of his duties in this regard. The very fact that the patient visits doctor establishes a relationship in which doctor has the duty of disclosure. As in cases of negligence, no uniform standard can emerge, as

13 M. Vijaya v The Chairman and Managing Director, Singareni Collieries Company Ltd. 2002 ACJ 32
14 Dr. Suresh Gupta v. Govt. of Delhi 2004 6 SCC 422

15 Dr. Suresh Gupta v. Govt. of Delhi 2004 6 SCC 429 para 21
16 Indian Medical Association v. V.P. Shantha 1995 6 SCC 651

a practice of medicine is extremely case specific. Ultimately it should be clear that the legal conclusion based on medical conclusions has been and always will remain the duty of the courts.

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By:

Annu Bahl (Research Scholar), Assistant Professor, School of Legal Studies, Noida International University.

Dr. Rama Sharma HOD, School of Legal Studies, Delhi Metropolitan Education.

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