

Judicial Approach towards Combating Medical Negligence

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Abstract:

The Medical profession has reached new horizons, facing many ethical and legal challenges in the practice of the profession. Doctor-Patient relationship is changing swiftly and adversely. The patient, who in earlier days had full faith in his treating doctor, now suspects negligence as a cause of his sufferings. Commercialization of modern medical practice, ignorance towards medical ethics, zero tolerance and high expectation of patients, inclusion of health care services within the ambit of Consumer Protection Act has ultimately created such a vicious circle which is manifesting as an ever increasing incidence of litigation against the doctors and hospitals. No doctor can afford to remain ignorant to the Ghost named "Medical Negligence or Malpractice".

Key Words: Medical Negligence; Medical Profession; Service; Consumer Protection

Introduction

As per Salmond' Law of Torts, negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do¹. Negligence is the breach of a legal duty of care. A breach of this duty gives the patient a right to initiate action against negligence².

All medical professionals, doctors, nurses, and other health care providers are responsible for the health and safety of their patients and are expected to provide a high level of quality care. Unfortunately, medical professionals and health care providers can fail in this responsibility to their patients by not giving them proper care and attention, acting maliciously, or by providing substandard care, thus causing far-reaching complications like personal injuries, and even death.

Constituents of Medical Negligence³:

'Negligence is a state or condition of mind. Negligence essentially consists in the mental

attitude of undue indifference with respect to one's conduct and its consequences. Negligence is an attitude of indifference. Duty to take care leads to negligence. Breach of duty gives rise to negligence.

Medical Negligence is, as the term suggests, relates to the Medical profession and is the result of some irregular conduct on part of any member of the profession or related service in discharge of professional duties. Medical Negligence can be seen in various fields like when reasonable care is not taken during operations, during the diagnosis, during delivery of the child, with issues dealing with anaesthesia etc. Since this field is very vast we will limit ourselves in understanding the basic concepts which are essential for the Negligence to be committed.

Standard of Care:

Medicine heals, but this fact does not hold true for every patient. According to World Health Organization one in 10 hospital admissions leads to an adverse event and one in 300 admissions in death. Unintended medical errors have become a big threat to patient safety and WHO lists it

among the top 10 killers in the world.

Medical Professionals commit errors despite prudence and care in their day to day medical practice such as incorrect diagnosis, wrong treatment and lack of consent. This inherent fallibility in the medical professionals in directly related to legal action. Previously medical professionals were mainly worried about failing to save the life of a patient or providing satisfactory treatment to a sick person. Now they also worry about the legal consequences of their failure.

Ever since the medical professionals have been brought within ambit of Consumer Protection Act 1986, there has been a drastic increase in the number of cases filed against the doctors. However, it is a great mistake to think that doctors and hospitals are easy targets for notsatisfied patients. They are not liable for everything that goes wrong to the patients. They are only required to exercise reasonable care and skill in their treatment of patients. They are only required to exercise reasonable care and skill in their treatment of their patients. They will be held guilty of negligence only if they fall short of the standards of reasonably skillful medical practitioners. Deficiency in service thus cannot be fastened on the opposite party⁴.

In a case that led to visual impairment as a side effect, the following observations were made. The literature with regard to lariat clearly mentioned that the side effect of this medicine if taken for a longer duration can affect eyesight but this is not a fact in this case. Besides, there is no expert evidence on record to show that the use of this medicine caused damage to the patient's eyesight. Even for argument's sake, if it is accepted that this medicine caused damage to the patient's eyesight, if the Respondent-doctor is one who has advised his patient to use this medicine after an examination in which he found the patient to be suffering from malaria, in that case as well the doctor-Respondent cannot be held guilty of negligence or deficiency in his service. However, as stated above in this case the medicine has been used by the patient in low

doses for a few days and there is no expert evidence to show that the use of medicine has affected his eyesight. Therefore, the Complainant-Appellant has failed to prove that the Respondent was negligent and deficient in his duty as a doctor⁵.

Evidences of Medical Negligence

It is a known fact that even with a doctor with the best skills; things sometimes go wrong during medical treatment or in a surgery. A doctor is not to be held negligent simply because something went wrong. It is an admitted fact that the complainant's eyesight was not restored after the operation was conducted by the Appellant but on this ground alone a doctor cannot be held negligent because even after adopting all necessary precautions and care the result of the operation may not be satisfactory since it depends on various other factors. The evidence suggests that the Appellant has performed the operation and acted in accordance with the practice regularly accepted and adopted by him in this hospital and several patients are regularly treated for their eye problems.

The Hon'ble Supreme Court in the case⁶ has held the above view and this view. The Apex Court and the National Commission has held that the skill of a medical practitioner differs from doctor to doctor and it is an incumbent upon the complainant to prove that the Appellant was negligent in the line of treatment that resulted in the loss of eyesight. A Judge can find a doctor guilty only when it is proved that he has fallen short of a standard of reasonable medical care.

The fact and circumstances of the case before us show that the Appellant has attended to the patient with due care, skill, and diligence. Simply because the patient's eyesight was not restored satisfactorily, this account alone is not grounds for holding the doctor guilty of negligence and deficiency in his duty. It is settled law that it is for the complainant to prove the negligence or deficiency in service by adducing expert evidence or opinion and this fact is to be proved beyond all reasonable doubt. The mere allegation

of negligence will be of no help to the Complainant⁷.

The following cases of alleged medical negligence provide an insight into how the final decision is reached by the judicial bodies. "All medical negligence cases concern various questions of fact, when we say burden of proving negligence lies on the complainant, it means he has the task of convincing the court that his version of the facts is the correct one". No expert opinion has been produced by the Complainant to contradict the report of the Board of Doctors. The appeal of the complainant was dismissed with costs as "No expert opinion has been produced by him." In a case of an improper union of the patella, no expert has been produced by the Complainant to prove negligence of the opposite party. Thus, it cannot be said with exactness that treatment of the Complainant by the opposite party was against the norms prescribed under the medical jurisprudence or that the opposite party in any way was negligent or deficient in the performance of his duties⁸.

Charge of Medical Negligence against Professional Doctors

From the time of Lord Denning until now it has been held in several judgments that a charge of professional negligence against the medical professional stood on a different footing from a charge of negligence against the driver of a motor car. The burden of proof is correspondingly greater on the person who alleges negligence against a doctor. It is a known fact that with the best skill in the world, things sometimes went wrong in medical treatment or surgical operation. A doctor was not to be held negligent simply because something went wrong. The National Commission as well as the Apex Court in the catena of decisions has held that the doctor is not liable for negligence because of someone else of better skill or knowledge would have prescribed a different treatment or operated in a different way. He is not guilty of negligence if he has acted in accordance with the practice

accepted as proper by a reasonable body of medical professionals.

Medical Negligence and the Consumer Protection Laws:

Medical negligence laws in India are now mainly under the Consumer Protection Act, 1986 and a complaint under the said act is filed by the aggrieved person on which the consumer court issues notice to the other party to file his reply and subsequently based on the evidence of the parties or the opinion of the experts on the issue, the matter is decided by the consumer court finally and the order is passed on the complaint. The consumer courts have been holding the medical practitioner guilty of medical malpractice, medical negligence and unfair trade practices and has been awarded compensation to the aggrieved persons accordingly, based on the facts of the case. Another important aspect of the matter is the determination of the negligence of the hospitals which may include the negligence of the doctors, paramedical staff or any other person associated with the medical services. Now the medical negligence laws in India are based on the Consumer Protection Act, 1986 which has become the basis of several judgments on this point. In several recent judgments in the fields of Medical Negligence Laws in India, the courts have held the medical practitioners, hospitals and other institutions guilty of various kinds of medical malpractices, unfair trade practices and medical negligence leading to criminal prosecution besides civil liabilities.

View of the Supreme Court in Medical Negligence cases:

It is interesting to observe that the court has taken a very wide connotation and understanding of the concept of medical negligence. The court says that these questions are to be judged on the facts of each case and there cannot be a mechanical or a straitjacket approach that each and every case must be referred to experts for evidence⁹.

The court also says that a professional may be held liable for negligence if he was not possessed of the requisite skill which he professed to have 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 person exercising skill in that profession. Thus, it is not necessary for every professional to possess the highest level of expertise in that branch which he practices¹⁰.

Also, in today's context, the court made a very stimulating remark in relation to the quantum of damages. The court says that while computing compensation the Court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claims of the Opposite Party say that nothing is payable. Thus, the Court must award adequate compensation¹¹.

Also the court has time and again reiterated the fact that "Whenever a complaint is received against a doctor or hospital by the Consumer Fora, then it should first refer the matter to a competent doctor or committee of doctors, specialized in the field and only on their report a prima facie case of medical negligence can be made out and a notice can be issued to the concerned doctor/hospital"¹².

Conclusion:

In the terribly nature of the profession, physicians are prone to liability under civil and criminal law. The Consumer law in India allows patients to get a faster recovery of damages than tort law, because the action beneath a civil case is long and time intense. Moreover, the provisions of the Consumer Protection law are in addition to and not in derogation of different laws.

Common types of medical malpractice include surgery mistakes, post-surgery complications, post-surgery infection and other forms of negligence. "Empathetic engagement in patient

care can contribute to patient satisfaction, trust and compliance," Excellent patient relationships directly lower the risk of malpractice. If you have a great relationship and an unexpected outcome occurs, the risk of litigation is minimized.

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