# Judicial Interpretation of Medical Negligence and Liability of Doctors under Consumer Protection Act, 1986

**Kalpana V. Jawale**
Assistant Professor, Post Graduate Teaching Department of Law, S.G.B.A. University, Amravati, Maharashtra, India

## Abstract

Negligence is the breach of duty caused by omission to do something which a reasonable and prudent person guided by those considerations which ordinarily regulates human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Medical negligence is an act of negligence is committed by a medical professional. Medical negligence is said to be committed by a doctor or any the relating staff members, if a patient is not treated with proper care, resulting in an injury or death of the patient. Doctors are required to possess a particular level of learning, knowledge, expertise and skill and are to maintain a reasonable degree of care and caution, while performing their duty. Medical negligence and medical service has been covered under Consumer protection Act, 1986 but recently after this Act, it has been observed that cases of medical negligence are increasing day by day and standard of medical profession is also declining in India. Therefore the researcher has tried to discuss judicial interpretation of medical negligence and liability of doctors under Consumer Protection Act, 1986.

**KEYWORDS:** Medical negligence, liability of doctors, consumer protection Act and judicial Interpretation.

**Introduction:**

The doctor- patient relationship is unique and privileged relation based on contractual obligation and mutual trust and faith. But presently there is a great decline in this relationship which might be due to communication gap between them, commercialization of health services, raising expectations from doctors or increased consumer awareness. Though to make mistake is human nature, but mistakes of medical professional which may result in death or cause permanent harm can be ignored under law. The law does not aim to punish doctors for all their mistakes, but only to those which are committed out of negligence. Failure of a doctor and hospital to discharge this obligation is essential to impose liability. Therefore judiciary plays an important role while awarding compensation or damages. Thus, a patient's right to receive medical attention from doctors and hospitals is essentially a civil right.

According to law of tort negligence is a breach of legal duty to take care resulting in damage to the person. In other words, negligence is an act of omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do. The three basic elements of negligence are:

- A legal duty to exercise due care;
- Breach of the duty
- Consequently Damage

**Objectives:** while doing this research the researcher has framed following objective:

1. To define medical negligence.
2. To discuss the liability of doctors for medical negligence.
3. To discuss the medical service within the ambit of consumer protection Act, 1986.
4. To highlight the cases and judicial interpretation regarding Medical negligence and liability of doctors under Consumer protection Act.

**Research Methodology:**

While doing this research work the researcher has collected data from various books of imminent authors, Law Journals and websites therefore the researcher has adopted Doctrinal Method.

**Medical Services has been coved under the Definition of Service:**

Medical services have been covered under the definition of service defined under consumer protection Act. Service includes rendering of consultation, diagnosis and treatment, both medical and surgical. In this case it was also held that, Doctors in India may be held liable for their services individually or vicariously unless they come within the exceptions specified in this case, Doctors are not liable for their services individually or vicariously if they do not charge fees. Thus free treatment at a non-government hospital, governmental hospital, health centre, dispensary or nursing home would not be considered a 'service'[1].

Indian Medical Association *vs* V.P. Shantha[2] As a result of this judgment, medical profession has been brought under the Section 2(1) (o) of CPA, 1986 and also, it has included the following categories of doctors/hospitals under this Section:

a. All medical / dental practitioners doing independent medical / dental practice unless rendering only free service.

b. Private hospitals charging all patients

c. All hospitals having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals.

d. Medical / dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee

e. It exempts only those hospitals and the medical / dental practitioners of such hospitals which offer free service to all patients.

As a result of this judgment, virtually all private and government hospitals and the doctors employed by them and the independent medical / dental practitioners except primary health centers, birth control measures, anti malaria drive and other such welfare activities can be sued under the Consumer Protection Act, 1986.

Certain conditions must be satisfied before liability can be considered. The person who is accused must have committed an act of omission or commission; this act must have been in breach of the person's duty; and this must have caused harm to

the injured person. The complainant must prove the allegation against the doctor by citing the best evidence available in medical science and by presenting expert opinion.

**Medical Negligence and Liability of Doctors:** For Medical Negligence

Black's Law Dictionary defines negligence per se as "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 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."[3]

The liability of a doctor arises not when the patient has suffered any injury, but when the injury has resulted due to the conduct of the doctor, which has fallen below that of reasonable care. In other words, the doctor is not liable for every injury suffered by a patient. He is liable for only those that are a consequence of a breach of his duty. Hence, once the existence of a duty has been established, the plaintiff must still prove the breach of duty and the causation. In case there is no breach or the breach did not cause the damage, the doctor will not be liable. In order to show the breach of duty, the burden on the plaintiff would be to first show what is considered as reasonable under those circumstances and then that the conduct of the doctor was below this degree. It must be noted that it is not sufficient to prove a breach, to merely show that there exists a body of opinion which goes against the practice/conduct of the doctor.

With regard to causation, the court has held that it must be shown that of all the possible reasons for the injury, the breach of duty of the doctor was the most probable cause. It is not sufficient to show that the breach of duty is merely one of the probable causes. Hence, if the possible causes of an injury are the negligence of a third party, an accident, or a breach of duty care of the doctor, then it must be established that the breach of duty of care of the doctor was the most probable cause of the injury to discharge the burden of proof on the plaintiff[4].

Normally, the liability arises only when the plaintiff is able to discharge the burden on him of proving negligence. However, in some cases like a swab left over the abdomen of a patient or the leg amputated instead of being put in a cast to treat the fracture, the principle of 'res ipsa loquitur' (meaning thereby 'the thing speaks for itself') might come into play. The following are the necessary conditions of this principle.

- Complete control rests with the doctor.
- It is the general experience of mankind that the accident in question does not happen without negligence. This principle is often misunderstood as a rule of evidence, which it is not. It is a principle in the law of torts. When this principle is applied, the burden is on the doctor/defendant to explain how the incident could have occurred without negligence. In the absence of any such explanation, liability of the doctor arises.

Normally, a doctor is held liable for only his acts (other than cases of vicarious liability). However, in some cases, a doctor can be held liable for the acts of another person which injures the patient. The need for such a liability may arise when the person committing the act may not owe a duty of care at all to the patient or that in committing the act he has not breached any duty. A typical example of a case where such a situation may arise is in the case of a surgery. If a junior doctor is involved as part of the team, then his duty, as far as the exercise of the specialist skill is concerned, is to seek the advice or help of a senior doctor. He will have discharged his duty once he does this and will not be liable even if he actually commits the act which causes the injury. In such a case, it is the duty of the senior doctor to have advised him properly. If he did not do so, then he would be the one responsible for the injury caused to the patient, though he did not commit the act.

In the case of Dr. Laxman Balkrishna Joshi *vs*. Dr. Trimbark Babu Godbole[5] and Anr., and A. S. Mittal v. State of U.P. [6], it was laid down that when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are:

(a) duty of care in deciding whether to undertake the case,

(b) duty of care in deciding what treatment to give, and

(c) 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 the aforementioned case, the apex court interalia observed that 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, willful or reckless negligence, or negligence per se.

**Negligence per se and liability of Doctors:**

While deliberating on the absence of basic qualifications of a homeopathic doctor to practice allopathy in Poonam *Verma vs*. Ashwin Patel and Ors.[7], the Supreme Court held that a person who does not have knowledge of a particular system of medicine but practices in that system is a quack. Where a person is guilty of negligence per se, no further proof is needed.

**Medical Negligence and Damages:**

Claim for damages was based on the principle that if a person has committed civil wrong, he must pay compensation by way of damages to the person wronged. While elaborating on medical negligence, the apex court observed as follows ‘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 this context, it may be recalled that in the case of the State of Haryana and Ors *vs*. Smt. Santra, [8], the Supreme Court in a Special Leave Petition upheld the claim for compensation where incomplete sterilization (family planning operation) was held to be defective in service. Smt Santra underwent a family planning operation related only to the right fallopian tube and the left fallopian tube was not touched, which indicates that complete sterilization operation was not performed. A poor laborer woman, who already had many children and had opted for sterilization, became pregnant and ultimately gave birth to a female child in spite of a sterilization operation that had obviously failed.

In the case of Spring Meadows Hospital and Anr. *vs* Harjol Ahluwalia[9], a compensation of Rs. 5 lacs was awarded because of mental anguish caused to the parents of a child who became totally incapacitated for life in addition to a compensation of Rs. 12 lacs approx. awarded to the child. While the amount of Rs. 12 lacs was to be paid by insurer, the balance amount was to be paid by the hospital.

**Coverage of medical profession within the ambit of the Consumer Protection Act, 1986:**

In the case of the Indian Medical Association *vs*. V.P. Shanta and Ors[10]., the Supreme Court finally decided on the issue of coverage of medical profession within the ambit of the Consumer Protection Act, 1986 so that all ambiguity on the subject was cleared. With this epoch making decision, doctors and hospitals became aware of the fact that as long as they have paid patients, all patients are consumers even if treatment is given free of charge. While the above mentioned apex court decision recognizes that a small percentage of patients may not respond to treatment, medical literature speaks of such failures despite all the proper care and proper treatment given by doctors and hospitals. Failure of family planning operations is a classic example. The apex court does not favor saddling medical men with *ex gratia* awards. Similarly, a in a few landmark decisions of the National Commission dealing with hospital death, the National Commission has recognized the possibility of hospital death despite there being no negligence.

**Treatment of an accident victim by the hospital:**

This may serve the purpose of bringing about a qualitative change in the attitude of the hospitals of providing service to human beings as human beings. A human touch is necessary as per their code of conduct, that is their duty and that is what is required to be implemented. In emergency or critical cases, let them discharge their duty/social obligation of rendering service without waiting for fee or for consent.

In the case of Pravat Kumar Mukherjee *vs*. Ruby General Hospital and Ors, the National Commission delivered a landmark decision concerning treatment of an accident victim by the hospital. The National Commission allowed the complaint and the Opponent Ruby Hospital was directed to pay Rs. 10 lakhs to the Complainant for mental pain agony. The Commission observed as follows:

**The death of a patient while undergoing treatment does not amount to medical negligence:**

In the case of Dr. Ganesh Prasad and Anr. *vs.* Lal Janamajay Nath Shahdeo,[11] the National Commission reiterated the principle that where proper treatment is given, death occurring due to process of disease and its complication, it cannot be held that doctors and hospitals are negligent and orders of lower fora do not uphold the claim and award compensation. In this case, a 4 ½ year old child suffering from cerebral malaria was admitted to the hospital. A life-saving injection was given. As opined by the child specialist, doses were safe and the treatment was proper. Though the death of the child is unfortunate, it cannot be said that there was negligence on the part of the doctor.

**The opinion based on teachings of one school of thought may not amount to medical negligence:**

Observations of the National Commission in the case of Dr. Subramanyam and Anr. *vs.* Dr. B. Krishna Rao and Anr[12] Hon'ble Commission observed as follows:

*"The principles regarding medical negligence are well settled. A doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care. A doctor cannot be found negligent merely because in a matter of opinion he made an error of judgment. It is also well settled that when there are genuinely two responsible schools of thought about management of a clinical situation the court could do no greater disservice to the community or advancement of medical science than to place the hallmark of legality upon one form of treatment."*

**Error of judgment in diagnosis or failure to cure a disease does not necessarily mean medical negligence:**

In the case of Dr. Kunal Saha *vs.* Dr. Sukumar Mukherjee and Ors.[13] the National Commission considered the question of whether the Opponent doctors and hospital acted negligently in diagnosis of the disease suffered by the patient wife of complainant doctor, administration of medicine it was alleged that an overdose of steroids was prescribed, provision of facilities in hospital absence of burn unit in hospital was alleged. In this case compensation of Rs. 77, 76, 73,500/- was claimed.

The National Commission held that an error in medical diagnosis does not amount to deficiency in service. The National Commission further observed that the deceased (wife of Complainant) suffered from TEN Toxic Epidermal Necrolysis) which is a rare disease and the mortality rate varies from 25% to 70% as per medical literature. The Commission also observed that considering the facts and circumstances of this case, the doctor cannot be held liable for want of an exact diagnosis.

**Role of Expert opinion:**

Farangi lal *Mutneja vs.* Shri Guru Harkishan Sahib Eye Hospital Sahana and Anr.[14], Union Territory Commission, Chandigarh dismissed the claim based on medical negligence with following observation:

*"The O.P. conducted an eye operation upon the complainant. The cornea was damaged subsequently, and visibility was lost. The complainant alleged that proper*

*dilation of an eye was not done before conducting the cataract operation. Also it was alleged that the operation was done in a hurried manner. The Medical Council of India, after obtaining the expert opinion of two well known institutions, came to the conclusion that standard treatment protocol was followed and optimal procedures were carried out. Thus there was no negligence on the part of the O.P."*

**Engaging a specialist when available is obligatory:**

In the case of Prashanth S. *Dhananka vs*. Nizam Institute of Medical Science and Ors[15], the National Commission deliberated on important issues such as what constitutes medical negligence, the duty of a hospital to engage a specialist when a specialist is available, vicarious liability of a hospital for omissions and commissions of doctors and staff, and compensation for mental and physical torture.

**Liability of doctors when they decided not to operate due to critical condition:**

In the case of Narasimha Reddy and Ors. *Vs*. Rohini Hospital and Anr,[16] the National Commission held that when a patient could not be operated due to a critical condition, the doctor cannot be held guilty of negligence if the proper course of practice is adopted and reasonable care is taken in administration of treatment. Consequently the Revision petition filed by the complainant was dismissed.

**Patient failed to disclose case history to Doctors:**

The National Commission upheld the findings of the State Commission and dismissed the complaint on the ground that the patient did not give a correct case history and follow-up when required. The doctor cannot be blamed for the consequences. In the case of S. Tiwari *vs*. Dr. Pranav[17], it was alleged that a tooth was extracted without a proper test. When bleeding continued, the doctor administered a pain killer. Though the patient had a blood pressure of 130/90, he did not give the doctor his proper medical history.

**Vicarious Liability of the Hospitals:**

In the case of Ms Neha Kumari and Anr. V Apollo Hospital and Ors[18], the National Commission held that alleged medical negligence is not proved as the complainant suffered from complex birth defects of the spine and whole body as evidenced by a pre-operative CT scan. Two complaints were filed claiming a compensation of Rs. 26,90,000 alleging that while performing an operation on the spinal canal, a rod was fitted inappropriately at the wrong level that resulted in the non functioning of the lower limbs. The Hon'ble commission held that, we do not find it is a case of medical negligence as alleged.

However, on the question of vicarious liability of the hospital for negligence on the part of the consultants, the Hon'ble Commission relying on the judgment in Basant Seth V Regency Hospital[19] and rejected the contention of the hospital and held that the hospital is vicariously liable for any wrong claiming on the part of consultants.

**Award of ex-gratia compensation against doctors and hospitals:**

The decision of the Supreme Court in the State of Punjab *vs*. Shiv Ram and Ors.[20], on a complaint alleging an unsuccessful family planning operation due to negligence of the doctor can be said to be an important milestone for many reasons.

- Firstly, the Supreme Court held that medical men and hospitals should not be saddled with damages unless they are found negligent.
- The apex court felt that awarding ex gratia compensation against doctors and hospitals without any findings on negligence is not proper.
- The court further held that there is a need for developing a welfare fund or insurance scheme.
- Failure of sterilization performed successfully is attributable to causes other than medical negligence and that the state government should think of devising and making provisions for a welfare fund or collaborating with insurance companies.

This judgment makes very pragmatic observations in the midst of several verdicts against medical professionals and hospitals especially when an award is made based on sympathetic considerations.

The apex court reaffirmed the above observations in the State of Haryana and Ors. *vs*. Raj Rani[21]The Court held as follows:

*"Doctors can be held liable only in cases where failure of operation is attributable to his negligence and not otherwise. Medical negligence recognized percentage of failure of sterilization operation due to natural causes depending on techniques chosen for performing surgery. The pregnancy can be for reasons de hors any negligence of the surgeon. A fallopian tube that is cut and sealed may reunite and the woman may conceive though a surgery is performed. Neither can the surgeons can be held liable to pay compensation nor can the state be held vicariously liable in such cases. However, payment made by the state will be held as ex gratia payment and the money paid to the poor will not be recovered."*

This case implies that, while imposing liability on doctors there is need to take into consideration facts and circumstances of the cases.

**Sum-Up:**

As per definitions of consumer and service provided under consumer Protection Act, 1986. Therefore Doctor owes a duty of care to his patient, this duty can either be a contractual arising out of tort. The liability of a doctor arises not when the patient has suffered any injury, but when the injury has resulted due to the negligence of the doctor, which has been covered below the reasonable care of the doctors. In other words, the doctors are not liable for every injury suffered by a patient but he is liable only for breach of duty or negligence. When there is breach of duty or medical negligence burden of proof is on plaintiff and he has to show under what circumstances doctor has committed negligence. Medical negligence is a civil wrong

under consumer protection Act, 1986, therefore civil liability of doctors in the form compensation or damages. In this Article the researcher has tried to highlight some judgments in which commissions or courts has interpreted criteria of medical negligence and liability of doctors under Consumer Protection Act, 1986. The criteria of judicial interpretation are based on facts and circumstances of the cases therefore medical negligence it is changing case to case.

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