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JUDICIAL APPROACH TO MEDICAL NEGLIGENCE LIABILITY UNDER CONSUMER PROTECTION ACT

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Abstract

Medical profession is one of the oldest – profession and most humanitarian one. Doctors are considered as visible Gods. Doctors give life to the persons who are suffering from various diseases and injuries. Traditionally, the family doctor was considered to be a friend, philosopher and guide for the sick. The relationship between the patient and the doctor was considered as very sacred, it is based on the mutual trust and faith, and it is not mercenary. Increased mechanisation and commercialisation of the profession has brought an element of dehumanization in medical practice. During the last few decades a number of incidents have come to light in which the patients have suffered due to error and in advent conduct of Doctors. Due to the increasing conflicts and legal disputes between the doctors and patients, most of the legal systems have developed various rules and principles to deal with such inadvertent behaviours of doctors. This has led to the development of a new branch of jurisprudence that is Medical Negligence. The Researcher attempt to focus upon the judicial activism on medical negligence liability under the consumer protection act through some case laws.

Keywords: Information, Communication, Technology, National Policy, Education

1. Introduction

The Indian Judiciary including the redressal agencies constituted under Consumer Protection Act 1986 has made immense contribution to the development of various rules, legal principles relating to medical negligence and patient's rights. Some of land mark decisions which have in a way contributed to the development of Medical, Consumer and Patient's rights Jurisprudence. The judiciary plays a

significant role in the adjudication of medico-legal cases. It play a vital and important role not only in preventing and remedying of medical malpractice but also in eliminating exploitation of innocent patients and injustice. It has to do innovation in order to meet the challenges posed by the health care providers in the administration of medical service.

The prime object of the medical profession is to render service to humanity

with full respect for the dignity of man. A doctor has a duty to use necessary skill care, judgment and attention in the treatment of his patient. Any failure to exercise the above mentioned duty would lead to action for medical negligence. ***“Medical negligence is the breach of duty owed by a doctor to his patient to exercise reasonable care and skill, which results in some physician, mental or a financial disability”***¹

Medical negligence is the failure of a medical practitioner to provide proper care and attention and exercise those skills which a prudent, qualified person would do under similar circumstances. Medical negligence is a commission or omission of an act by a medical professional which deviates from the accepted standards of practice of the medical community, leading to an injury to the patient.

Medical negligence may be defined as a lack of reasonable care and skill on the part of a medical professional with respect to the patient, be it his history taking, clinical examination, investigation diagnosis and treatment that has resulted in injury, death or an unfavourable outcome.

MEDICAL NEGLIGENCE REMEDY UNDER CONSUMER PROTECTION ACT

The consumer protection act aims to see that the aggrieved or injured consumer should not be left without any remedy and at the same time provides a speed and inexpensive remedy through quasi-judicial bodies District Consumer form, State Consumer disputes redressal commission, and National Consumer disputes redressal commission. These bodies will perform functions as custodian or watchdog of the rights of the consumers. They are like additional judicial schemes to offer the socially weaker section, an efficient means of access to the law where the regular court system fails to perform adequately.

The "service" defined in 2(1) (o) of the Consumer Protection Act brings within its sweep service of any description

available to potential users. It is true that the professional services of doctors, engineers, lawyers are not specifically mentioned in s. 2(l)(o) of the Consumer Protection Act. The facilities of some services mentioned in s. 2(l)(o) of the Consumer Protection Act are merely illustrative of the definition of service, which is wide, but not exhaustive. Naturally, the professional services of doctors, lawyers, engineers, architects and technical services of mechanics, contractors, builders, fall within the ambit of s. 2(l)(o) of the Consumer Protection Act because these services are available to potential users on payment of consideration.

The patient can seek redressal from a Consumer Court for medical service under the following circumstances.

- (i) The services should have been hired or availed of or agreed to be hired or availed of by the patient.
- (ii) The services should have been rendered or agreed to be rendered by the doctor to the patient.
- (iii) The services of the Doctor should have been or availed of or agreed to have been hired or availed of for consideration.
- (iv) The services of the doctor so hired or availed of or agreed to be hired or availed of suffer from deficiency in any respect.
- (v) The services have not been rendered free of charge or under a contract of personal service.

A patient who pays up for the treatment, or promises to do so with a consideration can seek redressal in a Consumer Court. This has been settled by the land mark judgement of the Supreme Court in the case of **Indian Medical Association v. V.P. Shantha & Others**².

LIABILITY UNDER CONSUMER LAW

PROFESSIONAL SERVICE UNDER CONSUMER LAW

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The view of the National Commission is upheld by the Supreme Court which has arrived at the conclusion that service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of "service" as defined in s. 2(l) (o) of the Consumer Protection Act. The fact that medical practitioners belong to the medical profession and are subject disciplinary control of the Medical Council of India or State Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Consumer Protection Act.

The hospital is liable to take reasonable care about the treatment of the patient, if the services of the hospital are hired by the patient. When a patient is admitted to the hospital on payment and put in of a doctor, what really takes place is hiring of the service of the doctor by the patient. If the hospital provides other services, the patient is really hiring these services.³ A pensioner who avails of the facility of free supply of medicines under the Rajasthan Pensioners' Medical

Concessions Scheme by making monthly contributions at the rate prescribed, while in service, has hired the services in exchange for the contribution, and is, therefore, a consumer within the meaning of s. 2(l)(d) of the Consumer Protection Act 1986.⁴ An employee of the employer registered under ESI scheme is consumer for availing of medical service from the ESI hospital.

The two categories of services are exempted from the purview of the Consumer Protection Act 1986. Section 2(l) (o) of the Consumer Protection Act excludes service rendered free of charge and contract of personal service.

CRITERIA FOR DEFICIENCY IN SERVICE

"Deficiency" which has been defined in s. 2(X)(g) of the Consumer Protection Act, means, imperfection, shortcoming, or inadequacy in the quality, nature and manner of performance which is required to be maintained any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise relation to any service"⁶The deficiency of service under consumer jurisdiction undoubtedly includes what is negligence in the law of torts but is somewhat wider.⁷ The doctor may personally liable or the hospital may be vicariously liable for the deficiency of professional service rendered on payment. It is held by the Supreme Court⁸ that a determination about deficiency of service for the purpose of s. 2(l) (g) of the Consumer Protection Act has to be made by applying the same test as is applied in an action for damages for negligence.

The State Commission, Bombay⁹ awarded compensation of Rs. 2 lakhs against the surgeon whose indifferent attitude to the patient during post-operational complications caused serious mental and physical distress to the patient who was operated for coronary artery bypass graft surgery in Bombay Hospital. However, the National Commission reversed the decision of Bombay State Commission by holding that the private

doctor who performed the operation for a fee in the hospital, could not be expected to undertake and provide post-operative care and treatment to the hospital's patient. Where the operation is performed in a hospital i.e. an institution, it is the duty of the institution to render postoperative care and treatment. The State Commission, Delhi¹⁰ by its majority judgment held the hospital exclusively responsible for the negligent by not providing the required intensive care unit facilities to patient and directed the hospital to pay compensation of Rs. 1 though the minority opinion was in favour of awarding compensation against the hospital to the tune of Rs. 80,000 and against the surgeon to the tune of Rs. 20,000. However, this decision of Delhi State-Commission was set aside by the National Commission¹¹ which did not hold the surgeon and the hospital authority negligent. The National Commission¹² affirmed the decision of Kerala State Commission which held the hospital authority liable for deficiency in service rendered on payment to the patient who expired while undergoing treatment. The decision of National Commission was also upheld by the Supreme Court.¹³ The National Commission¹⁴ also affirmed the decision of the Madras State Commission which laid down that the hospital authorities could be made liable to the patient for injury caused to him by the negligence or other fault of the doctors, surgeons, nurses, anaesthetists and other members of the hospital in course of their work.

The State Commission, Gujarat¹⁵ held the individual doctor liable for negligence in performing operation of the neck of femur of the patient in a nursing home. Similarly, the State Commission, Chandigarh¹⁶ held the doctor deficiency in service, when the patient suffered post injection nerve palsy consequent upon injection administered by the doctor. It is held by the National Commission¹⁷ that the act of carrying out the operation of a patient with rare blood group and morbid

obesity for "uterine fibromyometosis" without 'making arrangement for blood and artificial respirator, by prolonging the duration of operation up to seven hours, and by shifting the patient from well-equipped hospital to ill-equipped hospital for monetary gain, amounts to deficiency in service on the part of the attending doctor. Similarly, the fact of leaving critically ill patient under the care of unqualified compounder, particularly when the situation demands constant monitoring of the patient, amounts to deficiency in service on the part of the doctor.¹⁸ Whenever sample is taken for any laboratory test and charges for test are collected, it is implied that delivery of test report will be completion of "service" hired for charges paid. When samples were collected two times for corean biopsy and the samples got spoiled for the delay in sending the same to the laboratory, deficiency in service was attributed to the hospital authority.¹⁹

The National Commission²⁰ also held one dentist negligent for preparing and supplying defective dentures to the patients. The National Commission²¹ field the hospital authority vicariously liable for negligence of the doctor whose deficiency of service caused the death of the mother and baby in a case of high risk pregnancy. The Supreme Court²² upheld the decision of National Commission. The State Commission, Delhi²³ held the Blood Bank liable for supplying contaminated blood which caused the patient suffer from viral Hepatitis-B. It was held by the State Commission, Bombay²⁴ that the defendant hospital was liable for deficiency of service in operational care to the patient.

Conclusion

The Consumer Protection Act provides simplified procedure for resolving the consumer's grievances. This act protect their interest of the consumers. This act provides a forum to victims of negligence in medical services.

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