



MEDINS**LEGAL**

MAY
2024

NEWSLETTER

MEDINS LEGAL TIMES



 www.medinslegal.com

 medinslegal@gmail.com

 +91-6262262691 | +91-8595760424

LEGAL AID FOR MEDICAL PROFESSIONALS



MEDINSLEGAL

PAGE - 3

Bengaluru Hospital, Laparoscopic Surgeon Slapped Compensation For Negligence In Surgery

PAGE - 6

Restrict Mobile Phone Use On Duty, No Jewellery Below Elbow: DGHS Advisory For Healthcare Workers

PAGE - 8

NCDRC Slaps Rs 25 Lakh Compensation On Safdarjung Hospital, 2 Cardiologists

PAGE - 12

"Doctors Acted In Accordance With General & Approved Practice": Chhattisgarh HC Quashes Medical Negligence Case Involving Death Of 6-Year-Old Child



MEDICAL NEGLIGENCE

Bengaluru Hospital, Laparoscopic Surgeon Slapped Compensation For Negligence In Surgery.

A District Consumer Court in Bengaluru recently directed a General and Laparoscopic Surgeon and a city-based Hospital to pay Rs 90,000 as compensation to a patient, who underwent surgery at the facility. It was submitted by the patient that even after undergoing surgery for the fistula issue, he did not get any relief and had to seek treatment elsewhere. "If the surgery had been conducted properly there would not have the problem and the pain of the complainant as asserted," opined the consumer court while slapping the compensation on the doctor and the hospital.

The matter goes back to 2021 when the treating doctor conducted surgery on the patient at the treating hospital for a fistula in the anus as the patient had developed severe pain and oozing from the anal region and was suffering from unbearable pain and discomfort. For the treatment including tests, consultation, surgery, post-operative care, medicines etc. the complainant had to spend around Rs 70,000. Allegedly, even after the surgery, he did not get any relief even after having medicines as prescribed, there was no improvement even after post-surgery with medication and rest and the same was not cured.

The patient alleged that the treating doctor had assured that within 5 days postsurgery, he would recover completely. However, the pain did not subside and therefore, the complainant consulted another Doctor at Shridi Sai Hospital. The doctors at the second hospital conducted the required tests and ascertained that the "Left Anterior Perianal Low Level Fistula" had not been removed through the surgery conducted.

Further, the patient was informed that he had to pay another Rs 75,000 to Rs 90,000 for the next surgery. Since the complainant was not able to spend that much of the amount he intended to make an appointment with the treating doctor. However, when he did not get an appointment, he secured an appointment through a fake name. Allegedly, the doctor did not hear the problem and a scuffle broke out and a complaint was lodged on 29.06.2021. Following this, the patient took Ayurvedic treatment at Sri. Dhanvantri Ayurveda Hospital, Bangalore.

On the other hand, the doctor and the hospital submitted that the patient had signed the consent form for the surgery and the said disease cannot be completely cured even after the surgery. It was submitted that it depends on diet habits, follow-up treatment and maintaining the food prescribed. It was submitted that the disease concerned is not permanently curable. Further, it was submitted that the doctor conducted the prescribed procedure as a prudent medical professional would do in the facts and circumstances of the case. However, while considering the matter, the consumer court opined that there was a deficiency in service and the patient was partly entitled to the relief sought. The consumer court took note of the acknowledgement given by the police regarding the complaint, in which it was alleged that even after the surgery the complainant had not been completely cured and he approached Shridi Sai Hospital, where the doctor gave a report that proper treatment was not given.

Apart from this, the consumer court also perused the prescription obtained from Shridi Sai Hospital and noted "On perusal of the same it appears that the complainant had obtained treatment at Shridi Sai hospital on 26.05.2021 and the scanning and diagnostic report issued by Imaging and diagnostic centre dated: 26.05.2021 indicates that the complainant had the problem of "Left Anterior Perianal Low Level Fistula"."

The complainant also produced a treatment charges receipt issued by the Ayurveda Hospital, where "Kshara Sutra" treatment procedure was given and the patient was kept under observation for one day. The Commission noted that the complainant paid a total bill of Rs 49,550 at the Ayurveda Hospital.

Noting this, the consumer court observed,

"We feel that itself indicates that the complainant had the problem and with the surgery by opposite party No. 1 the Fistula problem of the complainant has not been removed completely. If the surgery had been conducted properly there would not have the problem and the pain of the complainant as asserted. Further, it appears to us that nobody would visit and get admitted to the hospital post-surgery as the complainant did without any problem."

The consumer court further noted that the treating hospital and doctor did not argue that the medical bills and documents issued by the Ayurveda Hospital were concocted. Therefore, opining that there was medical negligence and deficiency on the part of the treating doctor and hospital, the Commission noted,

"Hence, we feel there was negligence on the part of opposite party No. 1 in conducting the surgery properly. The facts of the case in the cited judgment is entirely differed from the facts of the case in hand thereby the same is not applicable. Hence, for the above said reasons, there is deficiency of service on the part of opposite party No. 1 and as opposite party No. 1 has conducted the surgery at opposite party No. 2 hospital, we feel there is deficiency of service on the part of opposite party No. 2 also."

By considering the pain and suffering undergone by the patient and the extra expenses at Ayurveda hospital, the Commission opined that the complainant was entitled to a sum of Rs 60,000, another Rs 20,000 for the mental agony and suffering that he had to undergo and Rs 10,000 towards litigation cost.

Accordingly, the Commission ordered, "Complaint is allowed in part. The Opposite Party No. 1 & 2 are jointly and severally liable to pay a sum of Rs.60,000/- towards extra expenses incurred by the complainant in the form of damages and a sum of Rs.20,000/- towards mental agony and sufferings undergone and a sum of Rs.10,000/- towards litigation cost."

Case Title: RAJITH BABU V. SURESH HOSPITAL CONSUMER CASE NO. 42 OF 2022





Restrict Mobile Phone Use On Duty, No Jewellery Below Elbow: DGHS Advisory For Healthcare Workers

To safeguard the well-being of both patients and healthcare personnel, the Director General of Health Sciences (DGHS) has directed all the healthcare workers of Central government hospitals not to wear jewellery below the elbow and restrict the use of mobile phones while on duty in critical areas.

Issuing a directive in this regard, Dr Atul Goel, Director General of Health Sciences asked respective hospitals to maintain hygiene to minimize the risk of infection transmission and to ensure that an optimum standard of hygiene and patient care are maintained at all times. Dr Atul Goel has directed all the directors and medical superintendents of central government hospitals to introduce certain safety protocols to reinforce infection control practices within their facilities. Jewellery below the elbow and usage of mobile phones while on duty have been prohibited to prevent the potential spread of infection and minimize infection risks.

Addressing the director or medical superintendents of central government hospitals, Dr Atul said, "There is substantial evidence that wearing hand jewellery below the elbow increases total skin microorganism counts. Similarly, the use of mobile phones, while on duty especially in critical areas like ICUS, HDUS, post-operative wards and OTS, poses infection risks."

"Effective immediately, all healthcare workers of Central Govt. Hospitals are required to remove all types of jewellery below the elbow while on duty. This includes rings, bangles, bracelets, religious threads and wristwatches. This precaution is essential to minimize the risk of infection transmission and to ensure that an optimum standard of hygiene and patient care are maintained at all times. Respective hospitals can revise their SOPS on hand hygiene and specifically mention where wristwatches are permitted," said the order.

In addition, it has been directed to create and implement a policy that limits the usage of cell phones in patient zones and high-risk areas like ICUs, HDUs, post-operative wards, and operation rooms. "We understand that this may require some adjustments, but we trust that you will prioritize the safety and welfare of our patients above all else. Your cooperation in this matter is greatly appreciated and will contribute to creating a safer and more conducive healing environment for all," added the order.



Consumer Court India



NCDRC Slaps Rs 25 Lakh Compensation On Safdarjung Hospital, 2 Cardiologists

recently upheld the Delhi State Consumer Court's order to hold Safdarjung Hospital and its two Cardiologists liable for medical negligence and directed them to pay Rs 25 lakh compensation to the wife of the patient, who died during the treatment. In its order, the NCDRC held, "the standard of care and medical protocol required the administering of Inj. Nirmin which was not available in the Hospital. The State Commission's finding that this amounted to negligence is based on its view that an essential injection such as this was to have been available in a hospital such as the appellant hospital. There is no evidence led to prove that the alternative of Inj. Albumin was the alternative prescribed under the protocol for treatment. No medical records as mandated under the Medical Council of India Regulations (MCI) 2002 were also made available."

"In the absence of these records, the conclusion of the State Commission cannot be faulted," noted the Apex Consumer Court, while upholding Rs 25 lakh compensation order passed by the State Consumer Court.

The case concerns a patient who was suffering from COPD, Lower Respiratory tract infection, cardiomyopathy with poor heart function with leaking heart valves when he was admitted to Safdarjung Hospital on 12.01.2017.



As per the complainant, the patient was administered the injection Albumin which continued for a few hours without informing the family members of the patient. Further, it was claimed that the treating doctor, Sr resident cardiologist, administered the injection Albumin acting on the advice of the HoD of the cardiology department, when the patient's pulse rate was 67 and BP was 110/78. This injection was administered as an alternative since injection Nirmin was not available. Consequently, the patient became unconscious. Despite the resuscitation measures applied by the treating doctor on duty, the patient could not be revived. The complainant alleged that no records were supplied by the appellant hospital and doctors to prove that injection Nirmin was not available in the hospital and therefore injection Albumin was administered. It was contended that both injections of Nirmin and Albumin were administered.

Alleging an overdose of medicine, the wife of the deceased patient filed a consumer complaint before the Delhi State Consumer Court and demanded compensation for the alleged medical negligence, mental pain, and trauma. While considering the matter, the State Consumer Disputes Redressal Commission Delhi, had held the treating hospital and its doctors liable for medical negligence and directed them to pay Rs 25 lakh as compensation.

It had noted, "It is shocking that injection Nirmin was not available in a big hospital like Safdarjung Hospital in Delhi. There is no reason why said injection was not available in the hospital.

There is nothing to show that since when the said injection was not available in the hospital and what efforts were done by the hospital to procure that injection." The state commission had further observed, "The OPs have not denied in answer to para-4 of the complaint that they did not conduct any test before jumping to unlogical, unauthentic and astonishing conclusion that the patient has been suffering from alleged disease.

This is per se negligence... The second important factor is that OPs have not denied that initially they proposed to administer Nirmin injection. They have admitted that they gave injection IV Albumin. Now the only controversy is whether the injection was given simultaneously or Albumin was given in place of Nirmin. The OPs have not denied that administering both the injections simultaneously is not permissible or is not medical negligence. So the contention of the complainant that two other Senior Cardiologist advised her that it was a case of medical negligence, is strengthened."



However, the hospital and the doctors challenged the State Consumer Court's order on the grounds that the State Commission erred in arriving at the finding of medical negligence without obtaining an independent/ expert opinion in the absence of any proof to establish that the treatment provided was contrary to the medical protocol.

They submitted that the deceased patient was admitted to the CCU Unit II and was diagnosed with a case of CAD, COPD, Global LV Hypokinesia, moderate Mitral/ Tricuspid regurgitation, EF 15-20 with left ventricular failure. Allegedly, the patient was brought to the hospital after being treated for 7 days in a private hospital for pneumonia and he was a known case of dilated Cardiomyopathy who had eluded all treatment against the doctor's advice for the last two years. Tests, including 2D Echo, were done in the hospital and the family members were apprised of the seriousness of the illness. HRCT chest finding suggested severely damaged lungs.

The hospital and the doctors further submitted that the deceased patient's heart was working at only 1/6th capacity and that his Ejection Fraction (EF) was 15%, and given the leaking valve, the effective ejection fraction was less than 10%. They claimed that the patient was treated as per the standard guidelines and the proof of the same was improvement in condition, which was also admitted by them in the complaint before the State Commission. However, the patient became unconscious due to cardiac arrest as a result of Ventricular Tachycardia with hemodynamic collapse which, according to the hospital and the doctors, is a common cause of sudden death in patients with dilated cardiomyopathy with severe left ventricular systolic dysfunction. They stated that the doctor on duty provided cardiopulmonary resuscitation and certain injections. However, the patient could not be reviewed. They argued that the State Commission failed to consider that a substitute medicine can be administered to a patient and this alone does not result in harm or casualty. It was also submitted that there was no record to show that the death was due to an overdose of medicine as had been argued by the complainant.

Meanwhile, the counsel for the complainant contended that the hospital, despite the directions by the State Commission, failed to produce the original medical records of the patient which itself is an act of negligence. It was also contended that the State Consumer Court had noted manipulation and interpolation of records by the treating doctors and hospital, which, as per settled law, amounts to negligence and deficiency in service.



It was also argued that the hospital was negligent on account of the non-availability of Nirmin injection and that such a lack of availability of essential drugs also amounted to negligent and deficient service. Referring to the medical record provided under the RTI Act by the hospital to the complainant's son, it was argued that they had adopted a totally wrong and illegal line of medical treatment which was rightly observed by the State Commission. It was also contended that the hospital and doctors had distorted the facts of the deceased's past medical history and previous hospitalisation without producing any documents to establish either the treatment of either two years or even the name of private hospital where the patient had been allegedly admitted for a week prior to admission in hospital on 12.01.2017.

While considering the matter, the Apex Consumer Court noted,

"Admittedly, the standard of care and medical protocol required the administering of Inj. Nirmin which was not available in the Hospital. The State Commission's finding that this amounted to negligence is based on its view that an essential injection such as this was to have been available in a hospital such as the appellant hospital. There is no evidence led to prove that the alternative of Inj. Albumin was the alternative prescribed under the protocol for treatment. No medical records as mandated under the Medical Council of India Regulations (MCI) 2002 were also made available."

The NCDRC bench also referred to Regulation 1.3 of MCI Regulations, 2002 which states that "If any request is made for medical records either by the patients/ authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued with the period of 72 hours."

Highlighting the absence of the medical records, the Apex Consumer Court upheld the State Commission's order of granting Rs 25 lakh compensation to the deceased patient's wife and noted, "In the absence of these records, the conclusion of the State Commission cannot be faulted." "In view of the foregoing discussion, we are unable to find reasons to interfere with the findings and order of the State Commission. The order is liable to be upheld. Accordingly, the appeal is dismissed," it noted.





"Doctors Acted In Accordance With General & Approved Practice": Chhattisgarh HC Quashes Medical Negligence Case Involving Death Of 6- Year-Old Child

The Chhattisgarh High Court quashed an FIR against doctors who were implicated in a medical negligence (Section 304A IPC) case involving the death of a 6-year-old child. The Bench took note of the minute examination conducted by the Medical Board of the CG Medical Council to hold that the Doctors were well-qualified and registered medical practitioners.

A Division Bench of Chief Justice Ramesh Sinha and Justice Rajani Dubey observed, "The petitioners are the well qualified and registered medical practitioners vide Annexure P/3. The material collected during investigation do not disclose any such act committed by the petitioners which falls below the standards of a reasonably competent practitioner in the field. True it is that son of the complainant suffered untimely death after surgery of Hernia being done by the petitioners, however, the fact that the petitioners charged with negligence acted in accordance with the general and approved practice is enough to clear them of the charge."

Sr. Advocate Vivek Ranjan Tiwari represented the petitioners, while AG Vinay Pandey appeared for the respondents. After undergoing hernia surgery at a hospital, a 6-year-old child passed away when their condition deteriorated following the procedure. The parents of the child lodged an FIR against the doctors under Sections 304A and 34 of IPC alleging that the surgery was negligently performed without sufficient means. Apart from the FIR, a complaint was made against the doctors to the CG Medical Council which was duly examined by a committee of expert doctors who did not find the doctors guilty of any medical negligence.



The doctors contended that the surgery was conducted with due care and caution, and there was no evidence to suggest medical negligence and therefore filed a petition to quash the FIR registered against them.

“So far as cases of medical negligence are concerned, the Hon'ble Supreme Court has consistently held in plethora of its decisions that the standard of care which is expected of a medical professional is the treatment which is expected of one with a reasonable degree of skill and knowledge. A medical practitioner would be liable only where the conduct falls below the standards of a reasonably competent practitioner in the field,” the Court remarked.

The Court reiterated the decision of the Supreme Court in *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1 where the Court upheld the standard of the ordinary competent medical practitioner exercising an ordinary degree of professional skill and held that the standard of care must be in accordance with “general and approved practice.”

Consequently, the Court quashed the FIR and the consequential criminal proceedings against the doctors. Accordingly, the High Court allowed the petition.

Cause Title: Dr. Prabhat Panigrahi & Ors. v. State Of Chhattisgarh & Ors.



MEDINSLEGAL



CALL US NOW!

+91-62622-62691

Provide your medical profession with comprehensive protection.



WHY MEDINS?

INDIA'S PROFESSIONAL RISK MANAGEMENT ORGANISATION ONLY FOR HEALTHCARE PROFESSIONALS AND MEDICAL INSTITUTIONS

DEALING IN ALL
MEDICO LEGAL
CASE

COVERING PERSONAL
LEGAL MATERS

PRESENCE ACROSS
NATION

PROMPT RESPONSE BY
LEGAL TEAM

REASONABLE AND
COMPETITIVE
PRICING