MEDICO-LEGAL NEWSLETTER BY LEGALMD

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Medical Negligence

Medical negligence or malpractice is defined as a "lack of reasonable care and skill or willful negligence on the part of a doctor/medical officer in the treatment of a patient whereby the health or life of a patient is endangered".

In order to prove negligence charges, the patient/consumer must establish to the satisfaction of the court the following points:

i. Doctor's duty to attend the patient with care
ii. Negligence on the part of the Doctor
iii. The patient suffered actual damage
iv. The doctor's conduct was the cause of the damage, whether directly or indirectly.

Doctor's duty towards to the Patient

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

i. duty of care in deciding whether to undertake the case
ii. duty of care in deciding what treatment to give, and
iii. duty of care in the administration of that treatment.

The Hon'ble Supreme Court in *Jacob Mattew's* case has held that, "A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by committing to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.

If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life -saving dose of medicine. Discretion being the better part of the valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of an emergency where the chance of success maybe 10% (or so), rather than taking the risk of making a last-ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society."

Medical practitioner is not liable for choosing one reasonable course of treatment in preference to another

The Hon'ble Supreme Court in the case of *'Dr. (Mrs.) Chanda Rani Akhouri&Ors. v.Dr. MA Methusethupathi&Ors.'*has held that, "It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another."

Similar view was taken by the Hon'ble Supreme Court in cases of *'Bombay Hospital & Medical Research Centre v. Asha Jaiswal &Ors.*' and in *'Dr. Harish Kumar Khurana v. Joginder Singh and Ors.'*

Case Analysis

The National Consumer Disputes Redressal Commission, New Delhi (**"NCDRC"**) in the recent case of '***Shahla Imamv. Dr. Nahid Fatima****'* has observed that, "the Opposite Party-1 (hereinafter referred to as "OP-1") is qualified as a surgeon (MS) and practicing obstetrics in her maternity nursing home for several years. OP-1 had successfully conducted about 7000 deliveries so far. OP-1 was competent to do deliveries. No extraordinary expertise was required from OP-1. Therefore, it was wrong to hold that OP-1 was transgressing in other fields. There is no cogent evidence to hold OP-1 for the deviation from the standard protocol in the vacuum delivery procedure. The complications are known which we agree with the agony of the Complainant, but then, that by itself cannot be a cause for awarding damages for her sufferings."

Facts:

The Complainant/Patient during her 2nd pregnancy was under antenatal care (ANC) of the OP-1. It was alleged that on 23.08.2014, the couple (Complainant along with her husband) visited the clinic of OP-1. At the time of their visit, the Patient had no labour pain however OP-1 administered one injection to induce labour pain and the Patient was admitted to the nursing home of OP-1. On 24.08.2014, early morning a male baby was delivered. It was alleged that the baby was delivered by ventose application with a third-degree perineal cut (episiotomy). The OP-1 did not disclose or took the consent of the patient or her husband for the need of episiotomy and delivery by vacuum application. The Complainant alleged that OP-1 instead of performing Cesarean section delivery, performed vacuum delivery with third-degree perennial tear which caused injury to the rectal sphincter, and the episiotomy wound was not properly stitched. Thus, it was an act of negligence and deficiency in service of the OP-1. It was further alleged that she became disabled, unable to perform day-to-day activities, lost job opportunities and her matrimonial life was spoiled by the wrong treatment of OP-1.

Being aggrieved the Patient/Complainant file the Complaint and prayed the total compensation amount of Rs. 2,27,85,000/- under different heads.

Conclusion

The NCDRC correctly held that, there is no failure of duty of care of the doctor while choosing one course of treatment over the other, to prevent damage to the patient. A medical practitioner cannot be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another.