

CASE LAW- EXPERT OPINION

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Medical Recourse

A male aged about 42 years was having difficulty in walking due to pain and discomfort in legs and was under treatment since 1990, with past history of trauma in 1983. On 13.04.1998, he was diagnosed to have “mild hepatomegaly with aneurysm of lower abdominal aorta just above bifurcation” by colour doppler examination and was advised “Urgent Surgical Repair”. On 22.04.1998, patient was operated by appellant doctor/s at B Hospital for “Surgical dissection of aneurysm & PTFE Y limb Graft” and placed on ventilator in recovery room. Same day patient was found not to have pulse in legs which were cold. DSA was advised to evaluate post operative status and angiography which showed “block (clot) at graft” and patient was re-explored on same day and “fresh graft suturing” was undertaken. On 27.05.1998 patient was diagnosed have developed wet gangrene and on 29.05.1998, B/L Guillotine Amputation was undertaken. Subsequently patient was diagnosed with septicemia on 30.05.1998 and due to septic shock unfortunately breathed his last on 12.06.1998 at the same hospital.

Legal Recourse

Hon’ble National Consumer Dispute Redressal Commission awarded compensation of Rs. 14,18,491 along with 9% interest rate per anum. An article “Repair of Infrarenal Abdominal Aortic Aneurysm” related to mortalities related to such repair, Text book by “Robert B Rutherford” were referred by Hon’ble commission in addition to judgement – “Whitehouse V Jordan & Anr” for doctrine of “Res Ipsa Loquitor”.

Vide above referred appeal, appellant approached Hon’ble Supreme Court and major / important aspects are summarised:

1) Letters in spirit- in Major Averments by Parties to the dispute		
Sr No	Complainant	Appellant/s
A	The Doctor had not examined the patient after surgery.	“The patient was in critical condition when the Doctor was consulted on 21.4.1998 and surgery was thereafter performed within two days.” Treating doctor and subordinate doctors attended patient post operatively for monitoring and modality, as required.
B	The patient was made to stand in queue for DSA test despite his critical condition whereafter the machine was found to be dysfunctional.	Non-working of the DSA machine and consequent delay in performing the test cannot be said to be negligence on the part of the Doctor or the Hospital. The DSA machine is a large, expensive and complicated machine which unfortunately developed certain technical problem at the time when patient had to be tested. Any machine can become non-functional because of innumerable factors beyond the human control as the machines involve various mechanical, electrical and electronic components.
C	Angiography was performed after 8 hours of discovering that blood supply has stopped.	Operation theatres cannot be presumed to be available at all times. Therefore, non-availability of an emergency operation theatre during the period when surgeries were being performed on other patients is not a valid ground to hold the hospital negligent in any manner.
D	The hospital delayed treatment by 12 hours as no operation theatre was available.	- do -
E	The doctor did not attend the patient and left him in the care of inexperienced doctors.	As per the stand of the hospital and the doctor, the patient was kept in Cardio Vascular Intensive Care Unit after the surgery and was continuously being monitored by qualified post-graduate doctors.

Sr No	Complainant	Appellant/s
F	Doctor failed to amputate legs on time on account of gangrene and did not try to treat the gangrene.	On 27.5.1998 and observed that the patient had wet gangrene below knee and was thus advised amputation. On 29.5.1998, the patient was operated for amputation below the knee at the level of tibial tuberosity for treatment of wet gangrene and the Bilateral Guillotine Amputation was carried out.
G	The reliance on the principle of res ipsa loquitur to support the finding that it is a case of medical negligence.	Simply because a patient has not favourably responded to a treatment given by a doctor or a surgery has failed, the doctor cannot be held straightaway liable for medical negligence by applying the doctrine of res ipsa loquitur. The said allegations are not based or supported on the basis of the independent expert's opinion.

2) Salient Features of Judgement by Hon'ble Supreme Court of India

“simply because the patient has not favourably responded to a treatment given by doctor or a surgery has failed, the doctor cannot be held straight away liable for medical negligence by applying the doctrine of Res Ipsa Loquitur.”

“Having noted the decisions relied upon by the learned counsel for the parties, it is clear that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered.”

“we find that the findings recorded by the Commission holding the Hospital and the Doctor guilty of medical negligence are not sustainable in law. Consequently, the present appeals are allowed. The order passed by the Commission is set aside and the complaint is dismissed.”

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