

Patient Safety due to Administrative Negligence: Neglected Area in India?

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ABSTRACT

Background: Patient safety and security extends beyond due to medical error alone i.e. due to administrative carelessness. This aspect has been neglected or low priority area in India. Many instances if overlooked can be source of potential litigations for which court can award compensation against the hospital. Courts in India have recognized civil rights of right to safety of the patients and awarded compensation. **Methods:** A descriptive study has been conducted. This paper deals with administrative aspect on patient safety. A critical review of court cases in India and abroad along with review of relevant literature to make the situation understandable and clear for the safety and security of patients in India scenario. **Results:** Further study (KAP) needed to draw impact on the Health Administrators. **Conclusion:** An attempt has been made to sensitize the healthcare administrators/managers in both private and public sector hospitals.

Key Words: Patient Safety, Negligence, Damage, Damages, Health Administrator, Health Manager

INTRODUCTION

Patient Safety is a new health discipline that emphasizes the reporting, analysis, and prevention of medical error that often leads to adverse healthcare events. The patient safety knowledge informs improvements efforts such as: applying lessons learned from business and industry, adopting innovative technologies, educating providers and consumers, enhancing error reporting systems, and developing new economic incentives. [1] Data shows that less than one death per 100000 encounters occurs in nuclear power industry, the European railroads, and scheduled airlines. However, there is a risk of one death per 1000 encounters in healthcare. The frequency and magnitude of avoidable adverse patient events was not well known until the 1990's, when several countries reported staggering numbers of patients harmed and killed by medical errors. Recognizing that healthcare errors impact 1 in every 10 patients around the world, the WHO calls patient safety an endemic concern. [1]

Theme for the 'World Health Day 2009' was focused on the safety of health facilities and readiness of health workers who treat those affected by emergencies.

This paper deals with legal scenario and accreditation guidelines both abroad and in India on the issue of patient safety and duties of hospital's administrators. Both civil and criminal case can be entertained by the court on the issue of patient safety. Alleged negligence on the part of hospital administrators needs special attention in cases involving child swapping and kidnapping, and safety of other vulnerable patients.

NABH Standards in India on Patient Safety:

Chapter 8 and other Chapters (Table I) of the NABH Standards under title "Facility Management and Safety (FMS)" mentioned about detailed provisions of nine standards and 37 objective elements to provide safe and secure environment to patients, their families, staff and visitors. To ensure this, the organization complies with the relevant rules and regulations, laws and byelaws and requisite facility inspection requirements.

Global Initiatives:

Global Patient Safety Challenge a core programme of the "World Alliance for Patient Safety", was launched in October 2005 at WHO Headquarters, as an outcome of the 55th World Health Assembly resolution on patient safety.

India, which was one of the eight prominent member countries to participate in this event, has committed to work towards the cause of promoting Patient Safety. A pledge to this effect was signed by the Ministry of Health and Family Welfare, Govt. of India (MoHFW, GoI), in the presence of the WHO Representatives on 14th July 2006 at New Delhi. [1]

Global Legal Scenario:

The legal impact of three court decisions abroad placed emphasis on accountability and made hospitals and their governing bodies responsible for the actions of the staff providing services in that hospital.

In *Darling vs. Charleston Community Memorial Hospital* [2], the highest court of the state of Illinois considered the case of a young man treated in an emergency room for a fractured leg. Complications which reflected improper care led to amputation of the leg. The court held that the hospital governing board had a duty to establish mechanisms for the medical staff to evaluate, advice, and where necessary, take action when an unreasonable risk of harm to a patient arises from the treatment being provided by a physician.

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The California Supreme Court case of Gonzales vs. Nork and Mercy Hospital^[3], Dr.Nork was found to have improperly performed spinal fusions on a number of patients for several years, with no evidence of any hospital intervention. In 1972, the California court found that Mercy Hospital was liable because it had failed to meet its duty to protect its patients from malpractice by a member of its medical staff knowing, or it should have known, that malpractice was likely to be committed upon them. Mercy Hospital had no actual knowledge of Dr.Nork's propensity to commit malpractice, but it was negligent in not knowing because it did not have a system for acquiring that knowledge.

After hearing argument from counsel, the court denied Nork's motion for relief from jury waiver, discharged the jury, and then ruled in favour of plaintiff on the special defenses. Nork then moved for a new jury to decide the merits of the case. The court denied that motion, and trial continued before the judge sitting as trier of fact. He ultimately found in favour of plaintiff, awarding him \$1,710,447.17 in compensatory damages and \$2 million in punitive damages.

In *Thompson vs. Nason Hospital* (1991),^[4] Court observed that "The hospital's duties have been classified into four general areas:

A duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;

A duty to select and retain only competent physicians;

A duty to oversee all persons who practice medicine within its walls as to patient care; and

A duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients..." [Para 15]^[4,5]

Duty of care not limited to diagnosis and treatment:

Duty of care in the case of hospitals is not limited to diagnosis and treatment but extends to providing safe and secure place to ensure that the patients do not injure themselves. It is not uncommon that patients who are sick or under medication can become delirious, incoherent or act in a manner which would be harmful and not in their interest. Patients under the influence of drugs/medicines, due to high fever, nature of disease or psychological reasons need not obey instructions/advise of doctors, can become disoriented and lose ability to decide what is right or wrong. [Para 16]^[5]

These three cases way back clearly recognized a duty owed by the health administrators for patient safety and security.

MATERIALS & METHODS

Legal Scenario in India:

Facts of the case No.1 from Public Sector Hospital: A lady wife of Mr.Mohan Nerurkar

admitted to a Corporation Hospital to deliver child. Dr Sandhya Kamat, the Hospital Dean, tried to put the onus on Nerurkar's wife Mohini, who she claimed had handed over the baby to an unknown woman before going to the restroom. [Para 1, 4, Order Dated January 19, 2009]^[6]

A habeas corpus petition was filed by Mohan Nerurkar, whose four-day-old child was kidnapped from Sion hospital's maternity ward on January 1, 2009. Bombay High Court gave a 10-day period for Dr. Ravi Ranavare to conduct an inquiry into baby kidnapping case. The court, though, said the BMC had to come clean on the issue. "Who allowed the woman to enter the maternity ward? Were there enough nurses and attendants to provide proper care to the mothers and children inside the ward?"^[7]

Stand of BMC:

Court observed on the insensitivity shown by the BMC authorities that "Pursuant to the statement of the senior counsel on 6th March, 2009 on behalf of the Corporation, the Commissioner has filed an affidavit, which makes a pathetic reading. *Prima facie*, he has equated the infants born in the Municipal Hospitals with property like watches, purses, cellphones and ornaments, and his stand is that he is not responsible for security of patients, including children". [Para 1] [Order Dated: March 18, 2009]^[8]

Court further observed that "This matter needs a thorough consideration by this Court, and this Court will have to come to a conclusion whether the Corporation is responsible for, at least, the children who are born in the hospitals and are lost, particularly when a report given by the Committee appointed by the Commissioner himself had held that at least two officers of the Security Department, *prima facie*, were responsible. [Para 2] [Order Dated: March 18, 2009]^[8]

Role of Police:

Hon'ble Bombay High Court directed the Commissioner of Police, Mumbai, shall appear in person in this Court to explain as to what steps have been taken by the Police to recover the child on the next date of hearing. We sought appearance of the Commissioner of Police, Mumbai because we have not been able to get any assistance from the Government Pleader appearing for the Police in the matter. [Para 5, Order Dated January 28, 2009]^[9]

The Commissioner of the Police was also present in the Court personally and stated in its affidavit submitted on February 4, 2009 that they are taking steps to locate the missing child. He has also expressed his hope that some clues are with the investigating team and that the Police may be able to locate the child soon. He also informed the Court that the Special Investigating team has been assigned the task and they are working into it and the monitoring is done by the Deputy

Commissioner of Police. [Para 1, Order Dated Feb. 4, 2009] ^[10]

The special investigating team was directed to file a progress report every week with the Registrar of this Court in the sealed cover, unless and until the child is found and restored to his parents. The first such report shall be filed by 11/02/2009. [Para 6, Order Dated Feb. 4, 2009] ^[10]

Departmental Enquiry:

On the question of who should conduct the enquiry and against whom the Court observed that the Departmental Enquiry should have been ordered against the Dean of the Hospital herself. [Para 3, Order Dated January 28, 2009] ^[9]

Suspension Ordered:

Hon'ble Court directed the Commissioner, Mumbai Municipal Corporation to initiate a full fledged inquiry to be headed by a Principal of the Medical College. Till such time the inquiry is complete or till any further orders are passed by this Court, the Doctor in-charge of the Ward in which the child was lost and the Sister in-charge of the Ward in which the child was lost shall be suspended from service till the result of the inquiry. [Para 4, Order Dated January 28, 2009] ^[9]

Enquiry to fix the responsibility:

It was submitted that an enquiry has been ordered and the Dean of the Nair Hospital is heading the committee, who will look into the matter and fix the responsibility as to who was responsible for the incident, in which the child was lost and that the report is expected within 10 days. [Para 2, Order Dated February 4, 2009] ^[10]

Role of doctor:

The Doctor, who has been placed under suspension, was merely in-charge of the clinical responsibility of the child and mother in the hospital and not in-charge of the security. It was further submitted that no doctor was in-charge of the ward as there were various gynecologists and obstetrics units headed by certain doctors and all those doctors have various patients in the wards and that one sister and 4 staff nurses were attached to the ward.

That since the committee has been appointed, headed by the Dean of Nair Hospital, who will fix the responsibility, therefore, order of this court directing suspension of the Doctor and sister in-charge of the ward be stayed till the report of the Dean of Nair Hospital was received. [Para 4, Order Dated February 4, 2009] ^[10]

There is need to fix responsibility of all the stake holders whether dealing with clinical, administrative or other responsibilities. It is advisable to appoint / nominate one floor/ ward manager for each floor/ward as the practice is prevailing in the concerned hospital. It is better to appoint a committee having representation from all

the concerned departments, who should divide the work into clinical and purely administrative work and accordingly responsibility can be delegated to non-medical managers preferably from MBA/MHA background. This provision will help in better uses of clinical resources much needed for clinical services for better patient care.

Interim Relief to doctor and nurses:

The Court was satisfied that the Corporation authorities as well as police authorities have taken the matter with some seriousness and therefore, stayed its earlier directive ordering the suspension of Dr.Swapnil Kore and Nurse Shobha Parab. Taking into account the BMC plea that the doctor was only "clinically in-charge" and his suspension could affect patient care.

Court, however, expressed dismay at doctors' associations threatening to strike work over the issue of suspension. "Don't try to browbeat the court," said the judges, warning that it would be forced to initiate contempt proceedings if they interfered in judicial matters.

Measures to prevent future incidents:

In a criminal case brought before the Bombay High Court, observed that "This is a pathetic in which a lady went to a Corporation Hospital to deliver child thinking that she will deliver her child in a healthier and secured atmosphere. She must be cursing the day when she went to the Corporation Hospital to deliver child. Perhaps even if the child would have delivered on the roadside, she would have been able to protect her child and would not have lost the child. Neither the Hospital authorities appear to be concerned, as is evident from the affidavit filed, nor the State which has not even chosen to file affidavit". [Para 2, Order Dated January 28, 2009] ^[9]

Irked at the BMC's attempts to blame the mother of the child for the incident, Justice Nazki asked, "(The BMC claims) the dean was not responsible, nor was the doctor in charge or the nurse, the police says it's not responsible. Can we now ask the woman to go to a temple and pray to God for the return of her baby?"

"A large number of persons come to the municipal hospital because they cannot afford treatment at expensive private hospitals. Therefore, civic hospitals have a greater degree of responsibility. If the hospital fails to tackle such problems, the common man will be rendered helpless," -Division Bench Bombay High Court of Justice Bilal Nazki and Justice Anoop Mohta. ^[9]

In the same case Court observed that "We hope that all necessary measures shall be taken by the hospitals run by the Corporation where full proof security and requisite health care facilities are available to the common people, so that in future such mishaps do not occur. The Corporation is running the hospitals on which the majority of the people of the city and around the city are

dependent. As those people cannot afford any other private hospitals, these hospitals are much more needed than any other hospitals. If these hospitals do not provide the health care to the people then majority of the people of the city will be without proper care. [Para 3, Order Dated Feb. 4, 2009] ^[10]

Role of the State in protecting 'Civil Rights':

Court further observed that "This is a sorry state of affairs of the State dealing with the cases in which very important and valuable civil rights of the citizens of this State are involved". Court reacted against indifferent attitude of the public authorities when they even not willed to file affidavit before the court. [Para 1, Order Dated January 28, 2009] ^[9]

Recommended Remedial Measures by the Court:

A Division Bench of Smt. Ranjana Desai, J. and R.G. Ketkar, J. ^[11], issued detailed directions after hearing both the parties on May 6th 2009 after considering the nature of the issues involved in the petition. As an interim measure, Hon'ble Mumbai High Court deemed it fit to lay down certain remedial measures which must be taken to prevent thefts of babies from Government / Semi Government / Corporation Hospitals. With the consensus of the parties, Court lay down the following remedial measures:

"1. CCTV cameras should cover all the entry and exit routes as well as sensitive areas of the hospitals like neonatal and postnatal wards and pediatric wards. Entry doors of the above wards must be kept closed, and the entry must be restricted and regulated. Visiting hours must be fixed and no visitor should be allowed to enter neonatal and postnatal wards and pediatric wards unless proper entries are made in the visitors' register about the visitor's name, address and other particulars and the purpose of visit. Security Guards must be present for all the 24 hours outside neonatal and postnatal wards and pediatric wards. Security Guards must check baggage of the visitor, who goes out. Female Security Guards must be posted inside neonatal and postnatal wards and pediatric wards. Every Security Guard should have a walky-talky with him so that he can be in constant touch with other staff of the hospital in case of emergency. Photographs, addresses and other particulars of the Security Guards must be noted in the register kept in the hospitals. Staff in neonatal and postnatal wards and pediatric wards must have distinctive photo identification badges and the said staff must wear uniforms of the hospitals. Public address system must be installed in wards and passages. Pre-recorded audio messages of instructions should be played. LCD and DVD players must be installed at important places so that important messages can be screened in local languages i.e. Hindi or Marathi. Important signs and boards must be put up at visible places to

create awareness amongst the people and the messages on the boards must be in Hindi or Marathi. Matching identification bands must be attached to the infant, mother and father and they should contain numbers. Footprints, finger prints and special birth marks, if any, and as far as possible, biometric identification of the infant must be noted within two hours of the infant's birth or admission in the infant's medical record maintained by the hospital. Where biometric identification facility is not available, it should be made available within six months from today. No infant should be allowed to be taken outside the hospital unless discharged, or without permission of the In-charge sister. Infant should not ordinarily be allowed to be taken out of neonatal and postnatal wards and pediatric wards. However, if situation so demands and the infant is required to be taken out of the ward, the staff must verify that the person leaving the ward with the infant is wearing identification band and such person must be accompanied by the other staff of the ward. In the night, only a female visitor to whom pass is issued by the hospital may be allowed to stay with the mother. Security Guards and nurses should take rounds of the neonatal, postnatal and pediatric wards at regular intervals. In case of infants, discharge hours must be fixed from 12.00 to 2.00noon only. All postnatal patients who are fit for discharge must be discharged on the second day.

No postnatal patients should be allowed to go out of the ward for any reason except CT Scan, X-ray or sonography or for any other medical check-up, except with the permission of the In-charge sister. Examination for any physical complaint of postnatal patients and infants must be done, as far as possible, in the ward itself.

Payment counters must be kept open for all the 24 hours."

Hon'ble Bombay High Court further directed that the list of the above remedial measures be circulated in all the Government / Semi Government / Corporation Hospitals. [Para 2] ^[11] Court further added that "We hope and trust that the above remedial measures are adopted by the concerned hospitals as early as possible." [Order dated: 6th May, 2009] ^[11]

Facts of the Case No.2 from Private Sector Batra Hospital:

The plaintiff, then aged about 30 years was admitted to the hospital on 27.10.1988 with past history of intermittent fever for one month, which had lasted for 12-13 days and again re-occurred after two-three days. The plaintiff was clinically diagnosed as a case of relapse of partially treated typhoid fever. Widal test and blood investigations were directed. The plaintiff was prescribed Perinorm, Crocin, chloromycetin, inj. Mol etc. The temperature of the plaintiff was recorded as 104°F on 28.10.1988 and continued to remain high. There

was no substantial improvement in the condition of the plaintiff till 30.10.1988. On 31.10.1988, the Doctors decided to stop Perinorm as they suspected that the said medicine had induced speech disorder. On 31.10.1988, the widal test report was positive for enteric fever. [Para 2] ^[5]

Day of Incident:

In the night intervening 31.10.1988 and 1.11.1988 at about 2.30 a.m., the plaintiff was found to be missing from his room on the third floor. At about 3 a.m., Mr. Hans Raj, a security guard, found the plaintiff in a crumbled position in a gallery of the ground floor. He was taken into the casualty. X-Ray, revealed that he had suffered [Page No.3] multiple fractures on elbow with dislocation of left elbow. Myelogram revealed that the plaintiff had fractured his L-1 and L-2 Lumber Vertebrae with dislocation and complete transaction of cord. He was shifted to ICU and on 3/4.11.1988, fractures in elbow were fixed. He was operated upon to treat lumber vertebra but with limited result and the plaintiff became paraplegic. The hospital decided to waive of their bills for treatment and ultimately the plaintiff was discharged on 23.12.1988 in a paraplegic condition. [Para 3] ^[5]

Alleged Negligence case under Section 9 of the Civil Procedure Code (CPC):

Counsel for the plaintiff has given up challenge to diagnosis, medical procedure and treatment given in the hospital. It was submitted that plaintiff is entitled to damages as he had suffered multiple fractures including fracture of the Lumber Vertebrae, which has made him paraplegic, when he was under the care and custody of defendants. The defendants had failed to take reasonable care and, therefore, the plaintiff has suffered fractures, the cause for this paraplegic condition. [Para 4] ^[5]

Defense version:

The defendants, on the other hand, had submitted that they are not liable to pay damages as they were not negligent and casual connection between the treatment/hospital and fracture suffered by the plaintiff has not been established. Plaintiff had jumped from the 3rd floor room and had suffered injuries.

Question for considerations before the High Court:

On 24.07.1997 the following issues were framed:
“Whether the plaintiff has been reduced to a paraplegic due to the lack of care and attention of the defendants while he was under the treatment?
Whether the plaintiff is entitled for the compensation along with interest from the defendant? If yes, to what amount?
Whether the suit is maintainable under Section 9 of the CPC?
Whether there is any cause of action in favour of the plaintiff to file the present suit?

Relief?” [Para 5] ^[5]

During the course of hearing, counsel for the defendant conceded that issue No.(iii) does not arise for consideration and he accepts that the present suit under common law of torts or for breach of contract is maintainable. [Para 6] ^[5]

Issue Nos. (i) and (iv):

These issues are inter connected and therefore, are being examined together. At about 3.00 a.m. in the night on 1.11.1988, the plaintiff was found in a crumbled position on the ground floor, outside the main hospital building but within the hospital compound. He, as per the plaintiff, was found at a distance of 20 feet below the room occupied by him. As per the defendants the plaintiff was found on the ground floor below the room on the third floor occupied by him. The plaintiff was semi-conscious. On examination it was found that plaintiff had suffered multiple fractures including fracture of Lumber Vertebrae that has made him paraplegic. [Para 7] ^[5]

Both parties agree that sister of the plaintiff, Ms. Kajal Chakravorty had stayed back in the hospital that night. It is conceded by the counsel for the plaintiff that Ms. Kajal Chakravorty went off to sleep and woke up at about 2.20 a.m. and found the plaintiff missing. She contacted nursing staff and informed them. Security staff was also informed and about 3.00 a.m., she learnt that a patient was found in the corridor on the ground floor. [Para 8] ^[5]

Law of Tort and Damages:

A suit for damages based upon law of torts requires proof of:

Existence of duty to take care

Breach of the said duty by the defender due to failure to attain standard of care prescribed in law and

Causal connection between the breach and the loss caused. Breach of the duty recognized by law should be proximate or real cause of the loss. [Para 9] ^[5]

Duty under Common Law:

Duty to take care or standard of care can be prescribed by common law, by a contract or under a statute. The distinction between the three for the purpose of the present case is immaterial and need not be examined for the consequences are the same. The present case pertains to duty prescribed under common law and implied contract. Suit for damages based on breach of contract also requires existence of contract, breach of obligation to take care or observe standard of care and consequential damages. [Para 10] ^[5]

The second condition, i.e. breach of duty, is satisfied when a defendant fails to use requisite amount of care required by law in a case where duty to take care exists. It is failure to take care, which the defendants were duty bound to exercise,

which furnishes cause of action and constitutes negligence. Everyone is required to exercise requisite amount of care required by law in a case where a duty to use care exists. [Para 11] ^[5]

Foresight test:

Foresight test is generally applied to decide the question whether a duty to take care exists and the degree of care required and to determine causal connection between the act or omission and the loss/damage caused. Loss or damage should be traceable to the defender's negligence. Foresight test requires that every person should avoid an act or an omission which a reasonable man could foresee as is likely to cause injury to a person to whom duty to take care is owed. Every person is responsible for natural and probable consequences of his act or omission and is required to avoid risk of injury to a third person when reasonable foresight suggests that a person might be injured by failure to exercise reasonable care. [Para 13] ^[5]

Negligence is failure to take care and avoid acts or omissions, even when resultant loss or injury can be anticipated and reasonably contemplated. Question of negligence therefore requires scrutiny into the question of duty to take care and degree of care imposed and whether there was any breach of the duty to take care. Degree of care varies with relationship between the parties, particular situation and obviousness of risk. [Para 13] ^[5]

One is negligent not because of intention to cause loss/injury but because of carelessness or thoughtlessness which produces the said result. Negligence is a state of mind and is different from intention. Deliberate, willful or intentional act to cause harm will amount to negligence but the converse need not be true. Absence of intention is not an alibi to a claim for damages based on negligence. [Para 14] ^[5]

Duty to Safety and Security of Patient:

The plaintiff was admitted as a patient in the hospital. The defendants, therefore, owed a duty to take care, ensure safety and wellbeing of the plaintiff. The plaintiff was suffering from high fever, sickness and was under medication. The hospital was required to protect the plaintiff from all foreseeable harms and anticipated dangers. Quality of care expected from specialized private hospitals is not ordinary but of a high degree. The defendants-hospital professes and claims special skills in treating sick and infirm patients and charges substantial fee and charges. Duty of care as expected is of a high quality and of the same degree as expected from a parent. Medicines and drugs can be administered to patients at home. A patient is shifted to a hospital because it ensures better care, facilities and help with constant professional medical attention. [Para 15] ^[5]

Reasonable foresight predicates that hospitals should be conscious and aware that mishaps or injuries can result to a patient and keep supervision

and surveillance to check, prevent and protect patients from doing anything or acting in a manner which might cause harm to themselves or even others. [Para 16] ^[5]

Instances when a patient in a delirium or in psychosis cannot be regarded as farfetched or beyond reasonable contemplation. The defendant-hospital therefore was aware and had duty to take care that the plaintiff does not act in a manner by which he would injure and cause harm to himself. The defendant-hospital owed this duty of care to the patient.

It is, therefore not possible to accept the contention of the defendants that they did not owe duty to take care of the plaintiff beyond the diagnosis and treatment. The plaintiff was admitted and confined to bed in the hospital. Duty to take care included duty to prevent the plaintiff from moving out of the room, going down the staircase or injuring or causing harm to himself by taking a stroll. The defendants were aware and had knowledge that a sick patient may get injured or harm himself if he decides to go out for a stroll or a walk, even when his physical condition does not permit or allows him to do so. Injury or harm to patients is reasonably foreseeable. Strict vigil in hospital premises and round the clock safety checks are required to prevent a patient from taking steps or acting in a manner that could cause injury or harm. [Para 16] ^[5]

Award of Compensation:

The Delhi High Court has directed the city's Batra hospital to pay Rs 11 lakh as compensation to a man who jumped out of the hospital window due to its negligence and suffered permanent disability. A Division Bench of Justice Vikramjit Sen and Justice Sunil Gaur in a judgement enhanced the compensation awarded to one Ashish Majumdar by a single judge from Rs 7 lakh to Rs 11 lakh, saying the quality of care expected from private hospitals is not ordinary but of high degree. The Bench was hearing an appeal by the victim for enhancement of the compensation as well as a counter appeal filed by the hospital denying any negligence. ^[12, 13]

Thus, relying on well settled principles for awarding the damages in previous judgments of Hon'ble SC, Division Bench of Delhi High Court enhanced compensation from Rs.7 lacs to 11 lacs. ^[14, 15, 16]

Not a medical negligence case:

Before coming to the merits of this case, it needs to be noticed that the Plaintiff had given up the challenge to the diagnosis, medical procedure and the treatment given in the Defendant-Hospital. Therefore, reliance placed upon decisions of the Apex Court, in Jacob Mathew (2005) ^[17] and Nizam's Institute (2009) ^[18], is misplaced as these two cases pertained to medical negligence. [Para 20] [Order dated: December 23, 2009] ^[12]

Previous Judgment Relied upon:

There can be no straight jacket formula to marshal out as to what set of cases, the principle of “res ipsa loquitur” would apply. Many English Decisions have been cited where on the peculiar facts, it was concluded that this principle would not apply, but there are few decisions of the Apex Court, in Krishna Bus Service, (1976) ^[19] and of Shyam Sunder, (1974) ^[20], where this principle has been applied. It has also been applied in Cassidy vs. Ministry of Health, (1951) ^[21], which is somewhat akin to the present case as it had dealt with the liability of the hospital for the negligence of the medical staff. [Para 21] [Order dated: December 23, 2009] ^[12]

Compensation in Bombay Case:

Court directed BMC to award compensation and observed that “Therefore, as an interim measure, we direct the Corporation to pay a compensation of Rs.500000/- (Rupees Five Lakhs), within one week, to the parents of the child. This amount shall be paid by the Corporation through the Registrar (Judicial-I) of this Court, who shall keep it in a Fixed Deposit for a suitable period, and give monthly interest to the family, if they so require, because the order of compensation itself shall remain subject to the outcome of this petition and subject to final orders. If this Court finally decides that the family is not entitled to any compensation as suggested by the Commissioner, then the amount can be returned to the Corporation, so that the Corporation does not become poor”. [Para 4] [Order Dated: March 18, 2009] ^[8]

Fact of Case No. 3, AMRI Hospital Public Private Partnership (PPP), Kolkata:

That a fire broke out on 9 November 2011 in the 5-Star Hospital Advanced Medical Research Institute (AMRI), Kolkata. The fire started in the basement where large amounts of diesel / furnace oil were stored. None of the deceased died of burns but of suffocation due to intense smoke filling up the fully air-conditioned, almost hermetically sealed 5-Star Hospital Building.

The hospital was apparently registered under the West Bengal Clinical Establishments Act, 1950, and was functioning under a licence given by the Registering Authority / Government after necessary scrutiny and payment of fees as per the requirements of the Act. The incidence is a clear example of government malfunctioning / corruption whereby licences are given in disregard of legal safety requirements for ulterior motives. The responsibility for this incident apparently lies with the Government, and Board of Directors.

Seven AMRI directors were arrested on December 9, 2011 within hours of the fire, while two others - Chhetri and Pronab Dasgupta - were arrested on January 27, 2012. On February 3, 2012 an Alipore Court had granted AMRI Managing-Director and eminent cardiologist Moni Chhetri (93 years) bail

on health grounds. Chhetri is still under treatment. The Calcutta High Court granted bail to AMRI Director, R. S. Agarwal (68 years) on 17.02.2012, 70 days after he was arrested on his hospital bed after the Dhakuria blaze that killed 91 people.

It was also said the defence had forwarded Agarwal's continued illness for grounds for bail. The judge observed: "SSKM hospital (where Agarwal was admitted on a court order) was asked to furnish a medical report on February 1, 2012. The report stated that the patient's condition was stable. The ECG report was also normal." The Court recorded the State's submission that AMRI's compensation offer to the kin of the dead and the rescuers was an attempt to influence witnesses.

The court turned down the bail pleas of four other directors – R. S. Goenka, Prashant Goenka, Manish Goenka and Ravi Todi. ^[22]

A Division Bench of Justice Ashim Kumar Roy and Tarun Kumar Gupta, however, made it clear that Agarwal wasn't given bail on health grounds but for the fact that he did not attend any meeting of the AMRI Board of Directors in 2011. With Law Minister Moloy Ghatak by his side at Writers' Buildings, Banerjee told reporters: "Agarwal did not attend any board meeting in 2011, but he has been doing since 2006-07. This was the time when crucial decisions regarding altering the authorised basement car parking area began." ^[22]

The State Government will move the Supreme Court against the high court order granting bail to AMRI Director, R. S. Agarwal. Senior Advocate and Trinamool MP Kalyan Banerjee said: "We believe the order isn't legally sustainable." ^[22]

Allegations of Dual Approach against State Government:

On allegations that the government is adopting a dual approach in dealing with its own directors on the AMRI Board (Director of Medical Education is AMRI Chairman and Special Secretary, Health, is a Director) and the private directors, Banerjee said: "The government has only 1% stake. Police are investigating the matter and the charge-sheet will be submitted within the mandatory three-month period." ^[22]

On 17.02.2012, Justice Roy said that the Court wasn't granting bail to other four directors at this stage as police investigation isn't complete yet. Court observed that "We hope the investigation will be completed at the earliest and we will then consider the prayer for bail, if it is made". The judge said that the hearing of the plea had a limited scope and didn't consider the criminal matter in its entirety.

The judge observed that the directors had argued that they were not involved in the day-to-day affairs. "However, based on the submissions of the State Counsel, FIR and other materials on record, this can't be accepted. All major policy decisions were taken by the Board of Directors and they are accountable for the day-to-day affairs of the

hospital. It was also observed that the safety measures were not adopted for which the directors and the hospital authority is responsible.”^[22]

Case No.4 Duty of Administrators in selecting a qualified and competent Physician:

The petitioner (Managing Director of Puspanjali Hospital, Vikas Marg Extension, Delhi) was aggrieved from the letter dated 11th June, 2011 of the respondent Medical Council of India (MCI) seeking comments of the petitioner as to the registration particulars of Mr./Dr.Surender Pratap Singh admittedly employed earlier with Puspanjali Hospital, according to the petitioner on locum basis. [Para 1] ^[23]

The aforesaid occasion arose owing to a complaint earlier filed with the Delhi Medical Council (DMC) of Mr./Dr. Surender Pratap Singh being the Duty Doctor in Puspanjali Hospital in the night of 28th December, 2009 not preparing MLC with respect to the demise of one Mr.Rahul Jain. The said complaint was disposed of by the DMC vide order dated 18th April, 2011 issuing warning to the Medical Superintendent of Puspanjali Hospital [Page 1] that such lapses should not be repeated in future. However, in the said order itself, it is noted that Mr./Dr. Surender Pratap Singh was not registered with the DMC. [Para 2] ^[23]

Court observed that “Prima facie, it appears that without the said Mr./Dr.Surender Pratap Singh being registered with DMC could not have been employed by the petitioner as a Duty Doctor in his Hospital”. Court further observed on the lack luster attitude of DMC’s that “Surprisingly, the DMC notwithstanding having noticed the said fact did not take any further action with respect thereto”. [Para 3] ^[23]

The senior counsel for the petitioner had contended that the matter having already culminated with the order aforesaid of DMC cannot be re-agitated by the MCI. It is also contended that the MCI has no jurisdiction in the matter and was not authorized to even seek the comments of the petitioner. [Para 4] ^[23]

Since DMC has not dealt with the matter of Puspanjali Hospital employing and posting as a Duty Doctor a person who was not registered with the DMC, it is felt that the matter cannot be laid to rest with the order dated 18th April, 2011 of the DMC. DMC in its order aforesaid appears to be concerned only with the lapse in preparation of MLC and not with employment and posting by the said Puspanjali Hospital, as a Duty Doctor without verifying his credentials and ability to attend to the sick. [Para 5] ^[23]

The senior counsel for the petitioner has drawn attention to the order dated 4th May, 2011 of the Directorate of Health Services, Government of India but the same is also found to be dealing with non preparation of the MLC qua the demise of Mr. Rahul Jain and not with the employment of a doctor not registered with the DMC. [Para 7] ^[23]

The said stand of a doctor who is running a hospital is not found satisfactory. At least a doctor running a hospital is expected to, before employing anybody to treat the members of the public visiting the hospital, satisfy himself that the person so employed by him is qualified to practice medicine. [Para 8] ^[23]

The petitioner is also directed to file an affidavit in this Court as to the employment of the said Mr./Dr. Surender Pratap Singh and the satisfaction which was accorded by the petitioner of the said Mr./Dr.Surender Pratap Singh being qualified to practice medicine in the hospital of the petitioner. [Para 11] ^[23]

The senior counsel for the petitioner states that no response has been filed by the respondent MCI. [Para 1, Order 12.10.2011] However a reading of the order dated 13th July, 2011 makes it abundantly clear that the inquiry initiated by the respondent MCI was to go on and the stay was only of action if any stipulated against the petitioner as a result of the findings of the said inquiry. [Para 3, Order 12.10.2011] ^[23]

Though the senior counsel for the petitioner has controverted the aforesaid statement but even if the noticee does not respond, the respondent MCI cannot sit quite over the matter and is expected to proceed with the inquiry initiated and to after considering all the objections raised by the petitioner including as to the jurisdiction of the respondent MCI, render finding thereon. [Para 5, Order 12.10.2011] ^[23]

Issue of Jurisdiction: Role and Attitude of Delhi Medical Council:

The counsel for the respondent Delhi Medical Council (DMC) states that the jurisdiction over the Nursing Homes is of the Directorate of Health Services, Govt. of NCT of Delhi and not of the DMC. [Para 7, Order 12.10.2011] ^[23]

Role and Attitude of State Government:

The counsel for the GNCTD states that a notice was issued to the Nursing Home of the petitioner and though a reply has been received but no further proceedings have been taken. [Para 8, Order 12.10.2011] ^[23] The respondent GNCTD is also directed to after considering the reply of the Nursing Home pass the necessary orders. The senior counsel for the petitioner contends that the GNCTD has already passed the order on 4th May, 2011. [Para 9, 10, Order 12.10.2011] ^[23]

However this Court in Para 7 of the order dated 13th July, 2011 has already observed that the order dated 4th May, 2011 is found to be dealing with non-preparation of the MLC and not with the employment by the Nursing Home of the petitioner of a Doctor not registered with the DMC. [Para 11, Order 12.10.2011] ^[23]

Counsel for the MCI states that about eight weeks’ time would be required to complete the inquiry and submit the report. [Para 1, Order 30.11.2011] ^[24] In

a sudden and surprising development petitioner has filed an application seeking permission to withdraw the petition. The application was not opposed by the respondent (MCI). The prayer made in the application was allowed and the petition and all pending application stand dismissed as withdrawn by the Delhi High Court. [Para 1 Order dated 17.08.2012] [25]

National Initiative on Patient Safety (NIPS) role played by AIIMS:

In keeping with the commitment of the MoHFW, GoI & the mandate of AIIMS, The Department of

Hospital Administration, AIIMS in collaboration with the WHO and INCLEN Trust has taken the lead in India. The National Initiative on Patient Safety (NIPS) was launched by the Health Minister Shri. Ghulam Nabi Azad on September 14th, 2009. He expressed grave concern regarding the lack of data regarding patient safety in the Indian Scenario and announced to put in place shortly a National Patient Safety Policy and also include Patient Safety concepts in Medical education. [1]

Table I: NABH Standards related to Patient Safety

Sr. No.	Chapter	Standard	Objective Elements
1	Chapter 1: Access, Assessment and Continuity of Care (AAC)	AAC-9, 11, 12	
2	Chapter 5: Hospital Infection Control (HIC)	HIC.1	4
3	Chapter 6: Continuous Quality Improvement (CQI)	CQI: 5, 6	9
4	Chapter 7: Responsibilities of Management (ROM)	ROM: 1-5	24
5	Chapter 8: Facility Management and Safety (FMS)	FMS: 1-9	37
6	Chapter 9: Human Resource Management (HRM)	HRM: 12	2
7	Chapter 10: Information Management System (IMS)	IMS: 5, 7	14
8	Chapter 11: Human Resource Management (HRM)	HRM: 11	3

CONCLUSIONS

We hope observations of Hon’ble SC may not hold true for these remedial measure for patient safety. SC had observed for non-implementation of guidelines in following words that “This only reveals an unfortunate state of affairs where the decisions are taken at the highest level good intentioned and for public good but unfortunately do not reach the common man and it only remains a text good to read and attractive to quote”. [1007D-E] [Para 1] Per G.L. Oza, J. in Pt. Parmanand Katara case 1989] [26]

Given the enviable record of aviation industry, which has the same level of stress, risk and technical complexity, the healthcare industry has, in the western world, tried to replicate its system of safety. In India we are at the cross roads, where we need to take concrete steps in the initiation of a culture of patient safety. Is this not right the time to think for much neglected right to safety of patients in India? [1]

There is need to generate awareness about NABH standards and accreditation of hospitals. Patient satisfaction and his safety should be the ultimate aim of any healthcare institution.

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