
MALKA TARANNUM V. DR. CP GUPTA – ANALYSIS ON MEDICAL NEGLIGENCE

Rukmini Ravi Madhok, Symbiosis Law School, Hyderabad

Introduction

The medical profession is one of the oldest professions as provided by humankind. It is one of the most noble professions provided considering it is only the medical workers and doctors whom we look up to when in distress. It is only them who can bring or let go of the loved one in the hospital. In the ancient Indian times, doctors or healers were seen as a form of Vishnu and thus associated to be godlike¹. However, in more recent times, these medical institutions have been places of legal disputes due to some mal practitioners taking advantage or administering medical care with negligence which ends in more harm than good. However, not always do such cases end with the accused been proven guilty. One such case is the case of Malka Tarrannum v. Dr. C.P. Gupta. this was held to be a case of medical negligence.

It has been very controversial and difficult to define negligence in medical terms and yet remains a highly debatable topic in the study of law of torts. As mentioned in the case of **Moni V. State of Kerala**² it was observed that medical negligence would not occur if the doctor or medical practitioner conforms to the reasonable means to proceed in the case. Of the adopts one of the multiple available options, it is held to be reasonable. In such a sense the components of negligence would include, a duty, a breach and said duty and a consequent harm that follows.

The case of Malka Tarrannum v. Dr. C.P. Gupta was a case in which a three-year-old girl was brought to a public hospital wherein it was seen that she would require a plaster for a fractured arm and a subsequent x-ray. However, due to the in availability of the x- ray machines, only a temporary plaster was applied which was later rectified in a few days by another doctor as there were complains of discomfort by the child. A complaint in the district forum by the child's

¹ Consumer laws in India, legal services India
http://www.legalserviceindia.com/laws/consumer_laws.htm

² Moni V. State of Kerala, SA. No. 832 of 2000(G)

mother regarding negligence by the first doctor. The main contention in the case was whether the first doctor was negligent in administering the plaster or not³.

India society has gradually their awareness in terms of the rights and duties in medical cases in a legal sense. This is good in a sense but has happened due to the degrading facilities, degrading standards of professional competence, facilities, and the appropriateness of their therapeutic and diagnostic methods which is not so good. However, with the development of legal interpretation of medical negligence people are now more confident to avail such services considering they now have the law on their side⁴.

Usually, cases involving any field of expertise such as architecture, engineering or medical cases would call for some expert analysis to make sure a proper procedure was adopted or not. Therefore, in a case like this the standard that would be applied would be what a ordinary person of that skill set would've done in the given situation.

Since the late 20th century there has been huge debate on do medical services categorically come under the definition of 'services' as mentioned in the Consumer Protection Act section 2(1)(o). However, in 1995, the Hon'ble supreme court of India in the case of **Indian Medical Association v. VP Shantha**⁵ brought the medical profession under the ambit of service as mentioned in the consumer protection act, 1986. Deficiency of said service would mean any fault, shortcomings or imperfection or something short in providing the required quality, nature or the procedure required by the law in force at the time or an obligation which might be brought upon by being party to certain implied or expressed contract.

In this paper the researcher shall aim to analyse the case of *Malka Tarrannum v. Dr. C.P. Gupta* in respect to the legal concept of medical negligence.

Scope of the study

This research paper shall accommodate in itself the case analysis of *Malka Tarrannum v. Dr. C.P. Gupta* and the concept of medical negligence it encompasses with respect to law of torts. It will explain the definitions, essential elements and defences of medical negligence as are

³ Smt. Malka Tarannum vs Dr. C.P. Gupta on 20 April, 2009

⁴ Medical Negligence and Law in India, By Sylvine -July 18, 2016
https://blog.ipleaders.in/medical-negligence-law-india-analysis/#_ftn1

⁵1996 AIR 550, 1995 SCC (6) 651

applicable in India. The paper shall focus on the core concepts as mentioned in the case of *Malka Tarrannum v. Dr. C.P. Gupta* and shall look into similar cases in the jurisdiction of India as well in England.

Research objectives

The objectives of this research paper would be as follows:

1. To understand the facts and circumstances of the case of *Malka Tarrannum v. Dr. C.P. Gupta*.
2. To understand the concept of medical negligence and its details along with important acts.
3. To understand the defences and punishments which might be available in medical negligence cases.
4. To look into some of the significant case laws of medical negligence in Indian as well as others.

Literature review

1. **Medical negligence in India by Richa Singh of Faculty of Law, Aligarh Muslim University, ipleaders** – This article explained all aspects of medical negligence, along with defences, burden of proof, case studies and other aspects involved in cases of medical negligence.
2. **Vicarious Liability in Medical Negligence by Dhananjai Shekhawat** – The paper explained what constitutes vicarious liability in the cases of medical negligence. It explained different theories of jurisprudence in context to medical negligence along with the position of vicarious liability in India in respect to medical negligence.
3. **Tort of Medical Negligence in India by Shivansh Shukla, NALSAR University of Law, June 7, 2020** – Explained medical negligence from the point of view of tort law and the various case laws associated with it and the relevant legislations.
4. **Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defence - A legal perspective by M. S. Pandit and Shobha Pandit** – It explained medical negligence key factors along with the importance of consent in such cases.

Research methodology

There are broadly two types of research methodologies which are doctrinal and non-doctrinal. The doctrinal method focuses on doing the research on the basis of sources already available on the internet as well as databases. Non doctrinal research on the other hand focuses on gathering information on a primary or first-hand basis. In this particular paper the researcher has relied mostly on doctrinal research method as scholarly articles and databases have been used for understanding the case in question and its elements.

Facts and circumstances of the case

The facts of the case are as follows. The plaintiff had a three years old daughter who while playing, fell on the playground and fractured her left hand on the date of 3rd September 1995. The following day the plaintiff took her for treatment of the fractured hand to the nearest city hospital. In the same hospital she was examined by Dr. AK Dubey. He prescribed some medicine and told her to wait and then come again for the hot saline formation on the child's hand. He also advised to get an x ray done for the child. However, considering there was no x ray plate at the time in the hospital so the plaintiff went home without the said test. The plaintiff then brought an x ray plate from another hospital and brought the report in front of Dr. Gupta, who then applied the plaster and other requirements on the fractured hand.

However, despite the said treatment there was no improvement in the plaintiff's daughter's hand and her fracture persisted. Concerned about his situation the plaintiff went to the hospital of Dr. Dubey, who then came to the conclusion that the plaster was applied incorrectly and thus was giving the child problems. He therefore removed the first plaster and applied a second one which was found to be quite comfortable by the child. The costs and expenditures of this second procedure were borne by the plaintiff itself. The child in a few days felt better and comfortable which led the plaintiff to believe that during the first plaster there was a case of medical negligence.

Aggrieved by said medical negligence by Dr. Gupta, the plaintiff filed a petition against the medical officer as well as the entire hospital staff before the district magistrate and come forth at the consumer district forum to ask for compensation of the losses she suffered. It was said by the respondent that the plaster applied was uncomfortable as it was done only temporarily and hence was obviously loose leading to the child feeling pain and that this was corrected only when a second time the plaster was corrected. But this was rejected by the district forum. It was

also said that treatment costs and other supplementary costs did not fall under the scope of consumer but this as well, was rejected by the district forum. The district forum thus allowed for the plea of compensation of Rs. 15,000/- to the plaintiff.

However, with not being satisfied with this judgement the respondent applied to the state commission which looked into the case and set aside the order made and this thus resulted in nullifying of the complaint made by the plaintiff.

Ratio decidendi of the judgement

The national commission said that appellant is a consumer or not is not a question of much debate considering the plaintiff at no point gave such evidence which was to prove that there were certain terms and conditions which would grant the plaintiff free medical treatment and hence the costs borne were only natural.

In order to ascertain whether there was negligence on the part of doctor Dubey we need to see the facts and circumstances in terms of whether the practice was done in usual and normal practice and that the defendant did not follow the same and that the path taken would be one that no man of ordinary prudence in ordinary course of events would have taken along with ordinary care.

The allegation out towards doctor Dubey that he didn't attend to the child is not in line with the facts. He did check the child and prescribed two medicines along with a recommendation to go for an x ray test. This comes under the scope of normal practice of medicine and was duly adopted by the respondent. The first plaster was made of POP plaster which falls in the ambit of normal medical practice and is what an ordinary person of required skill would have done as it is what is medically advised on an area of swelling which is temporary in any case and it required to be changed. Hence it would be wrong to say that the respondent did not take up the normal course of action.

Moreover, doctor CR Gupta is a senior Orthopaedic Specialist with a lot of practice on his side and hence for the plaintiff to make comments without considerable ground or proof did not seem to have any basis.

This we can see that no deviation from the normal course of action was taken place as would be by a responsible medical professional. Hence the petition of plaintiff was dismissed by the commission.

Medical negligence - Concept

Medical negligence is the name given to misconduct that might be done by medical practitioners if they are failing to provide the required care and due diligence that they are supposed to give which results in breach of their duties and subsequently harming the patients. It was observed in the case of **Moni v. State of Kerala**⁶ that medical negligence was a means in which the medical practitioner would not act in a way that any person of ordinary prudence would. There can be one or more reasonable standards of care to be adopted and if even one of them are adopted then the medical professional is not said to be negligent.

Medical negligence is an occurrence which takes place due to improper, under skilled and under professional treatment given which leads to some sort of breach in the duty of care. The standard of care in such a situation stands compromised. It is an offence under law of torts, Indian penal code, Indian contracts act, consumer protection act 1986 and many others as well⁷.

Essential of proving medical negligence

Carelessness is the break of legitimate obligation which is given to resulted upon an individual. For example, a virus drink creator needs to guarantee certain wellbeing rules to ensure it gives to all the security standards. Along these lines a clinical professional additionally has the right stuff and innovation to treat his patients and offer pertinent guidance and assuming he neglects to do as such, it's anything but a penetrate in his obligations. The obligations were referenced on account of **Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole and Anr**⁸ and are as per the following.

The duty to find out whether there an obligation to undertake a unique case or not. The duty to form an opinion on what treatment or therapy shall be being required by a patient before starting he treatment. The duty exists in then administrating said treatment in a proper manner.

⁶ Moni vs State Of Kerala on 4 February, 2011

⁷ Medical negligence in India by Richa Singh of Faculty of Law, Aligarh Muslim University, ipleaders

⁸ 1969 AIR 128, 1969 SCR (1) 206

Medical negligence can be caused by lack of proper care or just carelessness of the medical professional in charge during the diagnosis of the problem, during operation, while injecting anaesthesia. The most common times when such negligence occurs is in the times of lack of procedure safety rules, contamination of the sensitive area, improper blood transfusion and other things; which can easily be prevented by just due diligence and care of the medical practitioner.

Each and every medical practitioner has a duty of care towards his patients and if such breach occurs then a complaint can be brought forth by the patient for said negligence. In the case of **State of Haryana v. Smt Santra**⁹ the apex court was of the opinion that each and every health worker and professional hold a responsibility towards his patients to act in a responsible manner¹⁰.

Liability under the Law of Torts for medical negligence

The law of torts comes into play where the consumer protection act ends. People usually file a complaint under the law of torts to get compensation. For example, if a person is a victim of negligence and was in the hospital vicinity then the hospital would be held vicariously liable and would be asked to pay the damages in the form of compensation to the aggrieved party¹¹.

In the case of **Dr. Balram Prasad v. Dr Kunal Shah and Ors**¹² which is a landmark judgement the apex court awarded the highest compensation of 6 crores along with interest amounting to 12 crores to a case which was filed 15 years back and led to the plaintiff wife's death due to medical negligence.

In some circumstances a doctor can even be held liable for the acts done by a junior or lower-level doctor. If the employee of the hospital acted in a negligent manner, then the hospital shall be held vicariously liable for the act.

In the case of **Mr. M Ramesh Reddy v. State of Andhra Pradesh**¹³ the hospital authorities did not clean the bathroom in a careful manner which led to the fall of an obstetrics patient and

⁹ Bench: S.S.Ahmad, D.P.Wadhwa

¹⁰ Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defence - A legal perspective by M. S. Pandit and Shobha Pandit

¹¹ Tort of Medical Negligence in India by Shivansh Shukla, NALSAR University of Law, June 7, 2020

¹² III (2006) CPJ 142 NC

¹³ 1975 36 STC 439 AP

led to their death. A compensation for about 1 lakh was awarded to the plaintiff against the hospital.

In the case of **Lakshmi Rajan v. Malar Hospital Ltd** the patient was a woman who went to the hospital to enquire about the lump in her breast tissue. However, this somehow led to the removal of her uterus and had no effect on the lump as well. This also made her infertile and hence a compensation for about 2 lakh rupees was awarded by the judicial authority.

It is the doctor who has the obligation to provide for proper treatment and care which would be needed for the cure of a particular ailment. In case of failure to do so, would result in the failure of tortious or civil liability and thus awarding of compensation of the aggrieved party.

In the case of **Hunter v. Hanley**, the court said that any medical worker would be held liable if they do not take care and precaution that any other medical worker with ordinary skill and in the same situation would have with a prudent amount of care would have taken. The person needs to commit an offense which would result in breach of his legal duty and cause harm and injury to the patient. It must be proven that such negligence took place by giving the best available evidence as is seen in medical science and this same principle was developed and used in the case of **Dr. Laxman Balkrishna Joshi vs Dr. Trimbak Bapu Godbole**¹⁴.

Punishments of medical negligence

The punishments and disciplinary actions taken are mentioned in the eighth chapter of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 under the legislation of Indian Medical Council Act, 1956.

If any medical worker or practitioner is found guilty of any sort of medical malpractice and medical misconduct can be awarded punishments which includes, removing the name of the person from the list of medical practitioners either forever or for a specific period of time. During when the complaint is being looked upon the medical worker can be barred to perform any procedure or to do it under supervision. The said removal of barring is to be widely publicized so it is known to all medical related institutions¹⁵.

What are the defences available to the accused under IPC?

¹⁴ 1969 AIR 128, 1969 SCR (1) 206

¹⁵ Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defence - A legal perspective by M. S. Pandit and Shobha Pandit

There are certain defences which are available to medical workers accused of medical negligence which are as follows.

Section 80 of the Indian penal code – anything that might be don't by mistake or accident without any criminal intention or knowledge that the act might be harmful, thus an accident which might happened despite proper care and caution is not an offense.

Section 81 of Indian penal code – anything which is done with the knowledge of being likely harmful but with no criminal intention and in good faith with all the intention of preventing any harm of any kind would not be an offence.

Section 88 of Indian penal code – no person or medical worker would eb held liable for doing a harmful act which is likely cause some harm but it is don't faith and for the overall survival of the person who has explicitly or implicitly given consent to the act then the medical worker will not be held liable.

Conclusion

In spite of the fact that the specialists are viewed as God and patients accept that they will improve after the treatment and that they would be recuperated by the treatment given. However, now and again it so happens that even the specialists commit errors which cost a ton to the patients from various perspectives. Additionally, in certain cases the missteps made by them are perilous to the point that the patient needs to deal with issues and go through tremendous sufferings.

Clinical carelessness is the offense by clinical experts or specialists by not giving sufficient consideration and taking legitimate protects or measures bringing about the penetrate of their obligations hurting the patients. It happens in view of inappropriate, untalented or careless treatment gave to the patients. Each clinical expert or specialist has an obligation of care towards their patients and when they submit a break of this obligation of care it makes injury the patients and gives the patients on the right track to bring an activity against carelessness. The demonstration of clinical carelessness brings about common risk, criminal obligation and disciplinary activity.

Individuals are losing confidence in the clinical profession because of some genuine clinical carelessness cases which have made them doubtful for their leftover lives. Some genuine contemplation and examination are needed to be accomplished for the medical areas. It has

absolutely fizzled in self-administration. The clinical morals should be improved and grown to present with complete nobility.