

# Dispute Resolution Hotline

June 04, 2009

## INDIAN COURT AWARDS US STYLE DAMAGES IN A MEDICAL NEGLIGENCE CASE

Compensation awarded in India in a medical negligence case has usually been considered inadequate. Traditionally, the monies awarded are hardly enough to provide for even the basic needs of a complainant. It appears that Indian courts have always bordered on the conservative and have shied away from awarding huge compensatory or punitive damages to such persons. On May 14, 2009, the Hon'ble Supreme Court of India ("Court") has granted *Prashanth Dhanaka* a sum of Rs. 10,000,000 (Rupees Ten Million) alongwith interest thereon in such a matter. The said award ushers in an era of change.

### FACTS OF THE CASE:

On September 09, 1990, *Prashant Dhanaka* ("Complainant"), then 20 years old, visited the *Nizam Institute of Medical Sciences* ("Appellant") and after examination by three doctors, was admitted on October 19, 1990. An excision biopsy was performed on October 23, 1990 by *Dr. P.V. Satyanarayana*, a *Cardio Thoracic Surgeon*. Immediately after the surgery, the Complainant developed acute paraplegia with a complete loss of control over his lower limbs and other complications. He was discharged on May 19, 1991, completely paralyzed.

With a view to improve his quality of life, the Complainant's father requested for a detailed report from the Appellant in order to discuss the matter with experts from other developed countries. The Appellant did not give the detailed report in spite of reminders. Completely frustrated, the Complainant filed a complainant before the National Consumer Redressal Commission ("Commission") on April 05, 1993 alleging utter and complete negligence on the part of *Dr. P.V. Satyanarayana*, other attending doctors and held the Appellant vicariously liable. The allegations were primarily leveled at *Dr. P.V. Satyanarayana* for negligence before, during and after the operation.

The main contentions of the Complainant were that (1) a proper and complete pre-operative diagnostic investigation had not been carried out; and (2) consent had only been taken for an excision biopsy, which was merely an exploratory procedure and not for a complete excision<sup>1</sup>.

### ORDER BEFORE THE COMMISSION:

On the issue of consent, the Commission held that *Dr. P.V. Satyanarayana* discussing the possibility of deferring the operation and thereafter, explaining the gravity of the situation to the Complainant, constituted implied consent. Further, delving into the records and evidence available before it, the Commission, *inter alia*, held that the matter required the intervention of a Neurosurgeon and the neglect in associating one, constituted negligence. The Commission also held that there was a failure to conduct the necessary pre-operative tests.

Holding that there was negligence and deficiency of services, the Commission awarded approximately Rs. 1,550,000/- (Rupees One Million Five Hundred and Fifty thousand) to the Complainant and his parents.

### JUDGMENT BEFORE THE COURT:

Both parties filed an appeal from the order of the Commission. The Appellant filed an appeal disowning any liability whilst the Complainant filed an appeal for enhancement of compensation. Both appeals were heard simultaneously and were disposed of by a common judgment.

As the proceedings before the Court were in the nature of a first appeal (directly from the orders of the Commission), the Court heard the parties extensively including on the issue of negligence.

Noting that whilst the essential components of negligence<sup>2</sup> are 'duty', 'breach' and 'resulting damage', negligence in the context of the medical profession calls for treatment with a difference and additional considerations apply. Thus, a case of occupational negligence is different from one of professional negligence. The test for medical negligence in India was laid down in the *Bolam Case*<sup>3</sup>. A professional may be held liable for negligence on one of two findings being:

1. He was not possessed of the requisite skill which he professed to have possessed; or
2. He did not exercise the skill which he did possess with reasonable competence in the given case.

Therefore, a doctor rendering treatment to a patient is expected to have reasonable competence in his field (also known as Bolam's principle).

The Court, *inter alia*, held that:

1. a) complete investigations prior to the operation had not been carried out;
2. consent given by the Complainant for an excision biopsy could not, by inference, be taken as an implied consent for the surgery<sup>4</sup>;

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3. failure of the Appellant to produce the written consent taken from the Complainant would raise a presumption against the Appellant and the attending doctors;
4. the attending doctors were seriously remiss in not associating a neurosurgeon at the pre-operative as well as the stage of the operation;
5. the attending doctors were seriously remiss in the conduct of the operation and it was on account of this negligence that the paraplegia<sup>5</sup> had set in.

Insofar as the issue of burden of proof was concerned, the Court stated<sup>6</sup> that in a case involving medical negligence, once the initial burden had been discharged by the complainant by making out a case of negligence on the part of the hospital or doctor concerned, the onus then shifted upon the hospital or doctor, as the case may be, to satisfy the Court that there was no lack of care or diligence.

The Appellant also argued that as this was a complicated question requiring evidence of experts, the summary procedure adopted by the *Consumer Disputes Redressal Agencies* was not suitable for the determination of such complicated questions and the matter ought to have been tried by the civil court<sup>7</sup>. This argument was rejected by the Court on the ground that the Appellant had not seriously challenged the propriety of the Commission trying the dispute and had even consented to the recording of evidence by the State Commission. Significantly, an affidavit had been filed before the Commission on behalf of the Appellant itself wherein the deponent had made a request for calling a specialist from All India Institute of Medical Sciences, New Delhi, who would investigate the issue of negligence wherein the deponent further stated that he had no objection if the Commission did not propose to follow the requested procedure.

The Court proceeded to award the Complainant a sum of Rs. 10,000,000/- (Rupees Ten Million) alongwith interest @ 6% p.a. from March 01, 1999 until payment, as against his claim of approximately Rs. 75,000,000/- (Rupees Seventy Five Million).

#### ANALYSIS:

This judgment opens a new door in the barely tapped world of compensation in medical negligence. The Court has attempted to strike a balance between the inflated and unreasonable demands of a complainant, and equally untenable defences pleading no negligence by the respondent.

The Court has noted that if a case (for compensation in case of medical negligence) is made out, the Court must not be chary of awarding adequate compensation, which would need to be a '*rule of thumb measure*', requiring a balance to be struck.

Noting that the Complainant was now aged about 40 years and was a highly qualified individual, gainfully employed as an IT Engineer and earning Rs. 2,800,000 per annum, in computing the compensation, the Court kept in mind that the fact that the Complainant was a brilliant student, whose career had been cut short and as on date, there existed no possibility of improvement in his condition, requiring any compensation to ensure a reasonable and steady income to him until a time when he was unable to earn for himself.

**- Sahil Kanuga & Vyapak Desai**

1. The surgical removal of a foreign body or of tissue;
2. Replying upon its judgment in Jacob Mathew Vs. State of Punjab & Anr. (2005) 6 SCC 1.
3. (1957) 2 All ER 118 (QBD).
4. Relying upon its decision in Samira Kohli Vs. Dr. Prabha Manchanda & Anr. (2008) 2 SCC 1.
5. Paralysis of both lower limbs due to spinal disease or injury.
6. Relying upon its judgment in Savita Garg (Smt.) Vs. Director, National Heart Institute 7. (2004) SCC 56.
7. Relying upon its judgment in Indian Medical Association Vs. V.P. Shantha & Ors. (1995) 6 SCC 651.

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