Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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VOLUME – XXXVIII **June 2026** **ADVANTAGE - VI**

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Continued from May,2026 issue....

In the absence of evidence to prove the negligence of the Hospital, especially when the attendant of the patient was supposed to be present in the room, the complaint of medical negligence is dismissed.

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

CONSUMER COMPLAINT NO. 415 OF 2018

J.N. Mehra(Deceased) Through LRs.
Gayatri Rewal D/o J.N. Mehra,
R/o 564/A-59-III, Jubilee Hills, Road No. 92,
Jubilee Hills, Hyderabad – 500033. ….. Complainant

Versus

Apollo Hospital&Anr., City Campus,
Jubilee Hills, Hyderabad, A.P.-500096.
Through Its Chairman .... Opp. Parties

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), PRESIDING MEMBER HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

Date of pronouncement:- 15.04.2026

ORDER

4. In the written version, opposite parties No.1 and 2 claimed that complainant himself fell down from the bed in an effort to get down from the bed without using the call bell for patient care or informing the attendant. Present complaint is stated to be an abuse of process of law as there had been no negligence in attending and treating the patient at the hospital. It is pointed out that on 03.04.2017, complainant came to Hospital with complaint of slip and fall at home about a month back and was admitted for treatment and observation. Complainant was treated conservatively with antibiotics and analgesics with nebulization.

Further, based upon the opinion obtained from dermatology, anti-fungal was also administered. Complainant was also provided with physiotherapy after explaining the details to his daughter. The episode of fall of complainant from the bed on 05.04.2017 is attributed due to failure of complainant in seeking the help of the attendant or using the call bell for support services.

5. Opposite party No.1 further stated that consequent upon fall, necessary suturing of lacerated would was done after obtaining the consent of the daughter of the complainant. Also, CT Scan Brain along with CT Cervical Spine was undertaken. Further, no evidence of injury to skull, cervical spine, brain or spinal structure was observed in CT scan of brain and cervical spine. However, the complainant was shifted to ICU in view of drop in saturation and owing to drowsiness. Complainant was finally discharged after medical opinion on 12.04.2017 since he was a febrile, asymptomatic and doing better. Any subsequent deterioration in health of the complainant is stated to be unrelated or consequent upon the fall from the bed and injury to occipital region.

6. In the replication filed on behalf of the complainant, averments made in the complaint were reiterated. Complainant submitted that he had a fall while he was asleep and did not fall in an effort to get down from the bed of his own. Further, the fall from bed was attributed due to negligence on the part of the hospital as no attendant was present by the side of the complainant despite being aged and in high-fall risk category. Also, no family member is stated to have been allowed to sit or meet the complainant except for the prescribed visiting hours as per the policy of opposite party. It was further submitted that the complainant prior to admission at hospital was in better shape not dependent on anyone.

7. In support of the complaint, evidence by complainant J.N. Mehra was led by way of affidavit. Medical bills, reports and other documents were exhibited as Ex.CW1/A (Colly) and the copy of legal notice served upon the opposite party was exhibited as Ex.CW1/B. On the other hand, OP-1 and 2 filed evidence of Dr. A. Ravindra Babu by way of affidavit on the lines of the stand taken in the written statement.

8. Learned counsel for the complainant contends that believing the assurance of the opposite party for round-the-clock vigilance and monitoring by doctors, complainant had been admitted in the hospital as the care could not have been received by him at residence. He reiterates that the complainant suffered fall from the bed on 05.04.2017 about 5.30 a.m. due to negligence of the hospital as none of the staff members was present at the time of fall. The deterioration in the health of the complainant after discharge on 12.04.2017 was further consequential to fall from hospital bed and finally led to his death on 20.01.2023. Learned counsel further urges that complainant remained bed-ridden and on oxygen support along with neurological issues after discharge from the hospital. Reliance is further placed upon **Order dated 11.07.2022** ***Sq. Ldr. N.K. Arora, Retd. Through LRs. & Ors. v. Army Hospital (R&R) & Ors.*****, CC No. 93 of 2008**.

9. On the other hand, learned counsel for the opposite parties denies any negligence on the part of the doctors or staff of the hospital in rendering the treatment to the complainant or providing any in-house services and support. He vehemently contends that complainant fell from the bed as he made an effort to get down from the bed on his own. He urges that complainant should have taken the help from his attendant before making any such effort at 5.30 a.m. or the patient care bell should have been used for seeking help of support staff which is posted round the-clock. Learned counsel further reiterates that the proper treatment

had been duly provided to the complainant on admission and after his fall on 05.04.2017 by undertaking CT Brain and CT Cervical Spine, which did not reflect any major injury. Further, the complainant was shifted to ICU after suturing of lacerated wound, only in view of drop in saturation and drowsiness. The condition of the complainant is stated to have duly stabilized and was in a better condition at the time of discharge.

Learned counsel for the opposite parties further argues that on admission in the hospital, high risk patients are educated to get out of bed on the dominant/non-operated side with assistance. Further, necessary precautions are taken by the hospital by way of providing side rails on bed which is to be raised at all times. He submits that the complainant and attendant of the complainant were oriental with all bed controls, side rails and nurse call bell for any eventuality. He submits that the complainant was duly provided with clinical care and as per hospital policy for patients in a private room, it is mandatory to have a responsible family member/attendant along with patient for 24x7 hours.

He emphasizes that the complainant was duly accompanied by his daughter Gayatri Rawal at the afore-said time but did not call for any help, in case the patient required to get out of the bed. He further contends that after considering the over-all condition of the complainant, he was discharged on 12.04.2017 since he was a febrile and asymptomatic. Further, the attendant was advised about the need for oxygen at home. He submits that subsequent condition of the complainant in no manner was related to the scalp injury but owing to other ailments as noticed in diagnosis and advanced age of 90 years. Reliance is further placed by learned counsel for the opposite parties on

***Janak Kumari v. Dr. Balwinder Kaur Nagpal &Anr.*, 1986-2005 Consumer 8725 (NS); *C.P. Sreekumar (Dr.) v. S. Ramanujam*, (2009) 7 SCC 130;*State of UP v. B.P. Mishra,*Civil Appeal No.1743 of 2022; *Sheela Pahlajani v. Dr. Anjali Shrivastgava,* Civil Appeal No.7466 of 2010; *Bombay Hospital & Medical Research Centre v. Asha Jaiswal*, CA No.1658 and 2322 of 2010; *Harish Kumar Khurana v. Joginder Singh*, CA No.7380 of 2009; *Jyoti Devi v. Suket Hospital,* (2024) 8 SCC 655; *Vinod Jain v. SDM Hospital,* Civil Appeal No.2024 of 2019** and ***State of Punjab v. Shiv Ram,* (2005) 7 SCC 1**.

10. We have given considered thoughts to the contentions raised and perused the record. It is well settled that negligence is a breach of a duty caused by omission to do something, which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or something which a prudent and reasonable man would not do, as observed by the Hon"ble Apex Court in ***Jacob Mathew v. State of Punjab and Another,* (2005) 6 SCC 1**. Hon"ble Apex Court observed that simple lack of care, an error of judgment, or an accident is not proof of negligence on the part of medical professional and conclusions drawn in para 48 of the judgment may be beneficially noticed:-

> *"48. We sum up our conclusions as under:*
>
> *Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal&Dhirajlal (edited by Justice G.P. Singh),), referred to hereinabove,*

(1) *holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".*

(2) *Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence.* ***A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional.*** *So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.* ***When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.*** *So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.*

(3) *A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.*

(4) *The test for determining medical negligence as laid down in Bolam case [(1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] , WLR at p. 586 [[**Ed.**: Also at All ER p. 121 D-F and set out in para 19, p. 19 herein.]] holds good in its applicability in India.*

(5) *The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.*

(6) The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly".

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

11. It may further be observed that the onus to prove medical negligence is largely placed on the complainant, which can be discharged by leading cogent and probable evidence. A mere averment in a complaint which is denied by the other side, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. Reference may be made to observations of the Hon"ble Apex Court ***in C.P. Sreekumar v. S. Ramanujam*** (supra)in para 37 as under:-

"37. We find from a reading of the order of the Commission that it proceeded on the basis that whatever had been alleged in the complaint by the respondent was in fact the inviolable truth even though it remained unsupported by any evidence. As already observed in Jacob Mathew case [(2005) 6 SCC 1 : 2005 SCC (Cri) 1369] the onus to prove medical negligence lies largely on the claimant and that this onus can be discharged by leading cogent evidence. A mere averment in a complaint which is denied by the other side can, by no stretch of imagination, be said to be evidence by which the case of the complainant can be said to be proved. It is the obligation of the complainant to provide the factaprobanda as well as the factaprobantia."

12. The allegations in the present case do not relate to negligence in the nature of treatment provided to the patient/complainant but primarily concern the deficiency of services in post-care admission to the complainant, who was admitted as an indoor patient and fell from the bed at 5.30 am on 05.04.2017.

As per the complainant, the necessary care and monitoring during night, by way of round-the-clock attendant was not provided to the complainant, as assured, who was aged about 90 years, which resulted in his fall from the bed. On the other hand, opposite parties have taken a specific stand that necessary preventive measures are taken for high risk category patients by educating the attendants accompanying the patients about provision of side rails on the beds and to keep the same raised at all times. Further, they are informed for

using a bed side “call bell“, which is in the reach of the patient for any toilet needs/medical emergency, as required. The complainant is stated to be duly accompanied by his daughter Gayatri at the relevant time and no such call for help by the hospital staff was made on 05.04.2017 by the attendant. It has been categorically submitted that in the private room, the responsibility remains with the attendant of the patient to call for nurse or any other support staff for any need.

13. Perusal of the discharge summary of the complainant reflects that he was admitted with a diagnosis of “post-surgical infection, carcinoma prostate under treatment, COPD, scalp lacerations”. Complainant also had a slip and fall at home about a month prior to admission in the hospital and had a history of left IT fracture of femur. Complainant, as per the initial assessment on 03.04.2017 at the time of admission was conscious and was admitted in the hospital for observation and follow-up treatment. Admittedly, complainant was treated conservatively with antibiotics and analgesics initially but had an unfortunate episode of fall from the bed on 05.04.2017 and sustained lacerated wound measuring 3.5 cm over the occipital region, which was sutured. As per records, CT Brain along with CT Cervical Spine was undertaken which did not reflect any abnormality. However, the complainant was admitted in ICU due to drop in saturation and drowsiness. Complainant was later on discharged on 12.04.2017 after observing his overall condition and since he was a febrile, asymptomatic and better at the time of discharge. Further, the attendants were counselled about the need for oxygen at home.

To be concluded in the next issue.....

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