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## Wrong Diagnosis does not Amount to Medical Negligence: Supreme Court

*"We have sympathy for the appellant, but sympathy cannot translate into a legal remedy."*

*"We appreciate the pain of the appellant, but then, that by itself cannot be a cause for awarding damages for the passing away of his wife. We have sympathy for the appellant, but sympathy cannot translate into a legal remedy."*

The Supreme Court dismissed an appeal filed by a man against order of the National Consumer Disputes Redressal Commission (NCDRC) which dismissed his complaint alleging medical negligence on the part of a hospital in the death of his wife in the matter of *Vinod Jain vs. Santokba Durlabhji Memorial Hospital & Anr* (Civil Appeal No. 2024 of 2019 Arising out of SLP(C) No. 32721/2017, dated February 25, 2019).

The bench comprising of Justice L. Nageswara Rao and Justice Sanjay Kishan Kaul upheld the NCDRC order which had held that the case "would at best be a case of wrong diagnosis, but not medical negligence."

The state commission had allowed his complaint and ordered a compensation of Rs. 15 lakh; the national commission had set it aside.

The Apex Court discussed all the legal principles Bolam Test, *Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre* and *Jacob Mathew v. State of Punjab* while deciding the case.

### COMPLAINT

In the early hours on 16.10.2011, the IV cannula stopped functioning and instead of re-cannulating the patient, oral and not IV administration of the antibiotic cefpodoxime was done, which amounts to medical negligence.

### NCDRC

The bench agreed with NCDRC approach and said:

"The explanation offered by respondent No. 2-Doctor was that when he attended the patient at 11:00 a.m. on 16.10.2011, he found that the drip had been disconnected, on account of all peripheral veins being blocked due to past chemotherapies, and that the drip had been stopped, the night before itself, at the instance of the appellant. Taking into consideration the fact that the patient was normal, afebrile, well-hydrated and displayed normal vitals, the oral administration of the tablet was prescribed. This, according to the NCDRC was the professional and medical assessment by respondent No. 2-Doctor, arrived at on the basis of a medical condition of the patient, and could not constitute medical negligence."

"We see no reason to differ from the view expressed by the NCDRC, keeping in mind the test enunciated aforesaid Respondent No. 2-Doctor, who was expected to bring a reasonable degree of skill, knowledge and care, based on his assessment of the patient, prescribed oral administration of the antibiotic in that scenario, especially on account of the past medical treatments of the wife of the appellant, because of which the veins for administration of IV could not be located. Her physical condition was found to be one where the oral administration of the drug was possible."

"The appellant has also sought to make out a case that the blood culture report required his wife to be kept in the hospital. This was again a judgment best arrived at

by respondent No. 2-Doctor, based on her other stable conditions, with only the WBC count being higher, which, as per the views of the respondent No. 2-Doctor, could be treated by administration of the antibiotic drug orally, which was prescribed for 5 days, and as per the appellant, was so administered. In the perception of the doctor, the increase in lymphocytes in the blood count was the result of the patient displaying an improved immune response to the infection. **It is in this context that the NCDRC opined that at best, it could be categorized as a possible case of wrong diagnosis."**

### APEX COURT RULING

The apex court ruled that "In our opinion the approach adopted by the NCDRC cannot be said to be faulty, while dealing with the role of the State Commission, which granted damages on a premise that Respondent No. 2-Doctor could have pursued an alternative mode of treatment. **Such a course of action, as a super-appellate medical authority, could not have been performed by the State Commission.** There was no evidence to show any unexplained deviation from standard protocol. It is also relevant to note that the deceased was medically compromised by the reason of her past illnesses....." (Source: Live law)

### SOME QUOTES FROM THE JUDGMENT

In para 89 of the judgment in *Kusum Sharma & Ors*, the test had been laid down as under:

"89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view:

- Negligence is the breach of a duty exercised 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.
- Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.
- The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise 4 (1968) 118 New LJ 469 5 (supra) a reasonable degree of care. Neither the very highest

nor a very low-degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

- A medical practitioner would be liable only where his conduct fell below that of the standard so far reasonably competent practitioner in his field.
- In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.
- The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.
- Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.
- It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.
- It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.
- The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.
- The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."