



MEDICAL NEGLIGENCE LIABILITY UNDER CONSUMER PROTECTION ACT: - JUDICIAL ASPECTS

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ABSTRACT

Medical profession is considered to a noble profession however it been time again and again placed under scrutiny also I have all the person working in this profession. Medical negligence is considered to be one of the most crucial concern not just in a country but throughout the world. The primary reason is that the numerous cases have been reported under qualified medical profession has been taken in enquiry for not taking reasonable care during the time of operation, diagnosis, etc.

INTRODUCTION

“Medical negligence' as the improper or unskilled treatment of a patient by a medical practitioner, medical negligence leads to 'Medical malpractices' where the victims suffer some sort of injury from the treatment given by a doctor or any other medical practitioner or health care professional.”

WHAT IS MEDICAL NEGLIGENCE?

The Hon'ble Supreme Court in *Kusum Sharma & Others v Batra Hospital & Medical Research Centre and Others* placed reference to the Halsbury Laws of England 4th Edition Vol 26 pp..17-18 wherein it was defined as "Negligence. - Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give, and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient."

ESSENTIAL PARTS OF NEGLIGENCE: -

- Damage caused by such breach
- Existence of legal duty
- Breach of legal duty

Vinod Jain vs Santokba Durlabhji Memorial Hospital and Others

CPA SHOULD BE KNOWN BY MEDICAL DOCTOR

THE COMPLAINT SHOULD BE FILED BY WHOM?

“One such special act to safeguard the interest of innocent consumers is the “CPA 1986”. Any consumer who is betrayed by the trader and denied his/her rights can lodge a complaint against the trader under this Act”.

DEFINATION OF COMPLAINT?

“Under section 2 clause 6 of Consumer protection act 2019 complaint is defined as: - “Any allegation in writing, made by a complainant for obtaining relief provided under the act in case of unfair trade practices, defects in goods, deficiency in service, excess price of goods and services, selling of hazardous goods and product liability”.

WHAT IS MENT BY CONSUMER UNDER CPA

“A consumer is defined as,” a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose”.

EXPENCES OF FILING CONSUMER COMPLAINT?

“There is a nominal fee for filing a complaint before the District Consumer Redressal Forums”.

Where is complaint file?

“As per the consumer protection act 2019 “a complaint can be filed where the consumer resides or personally works for gains as well as the place where the opposite party resides or carry-on business. The complaint can also be filed where the cause of action, wholly or in part, arises”.

What are the powers consumer redressal form?

“The District Consumer Dispute Redressal Forum, has the pecuniary jurisdiction of up to an amount that does not exceed 20 lakhs. The State Consumer Dispute Redressal Commission has the pecuniary jurisdiction where the claim exceeds 20 lakhs but does not exceed 1 crore rupees”.

LEGAL PROVISION OF APPEAL?

“Every appeal under this section shall be preferred within a period of 30 days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission: - Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain.”

CONSUMER FORAMS POWER: -

“Consumer Form has, power to extend the filing of written statement beyond the period of 45 days as prescribed under the provisions of Section 13(2) (a) of the Consumer Protection Act, 1986”.

METHODS TO ENFORCE YOUR RIGHTS OF CPA?

- Directly to the tribunal.
- To an accredited industry Ombudsman.
- Applicable ombudsmen with Jurisdiction.
- to alternative dispute resolution agent.
- To the provincial consumer court with Jurisdiction.

- To a Court with Jurisdiction Over the matter.
- Or to the national consumer commission.

Medical Negligence: - Definitional Aspect: - Medical negligence is the failure to exercise due care, 3 Ingredients of Negligence are as Follows: -

- The Defendants / Respondents Owes a duty of care to the plaintiff.
- Plaintiff has Suffered an Injury Due to this Breach.
- Defendant / Respondent has breached this Duty of Care.

Therefore, medical negligence is no Different, it is only that in a Medical Negligence Case, most often the Doctor is the Defendant.

Medical Negligence: - Remedies

“Any aggrieved person can claim damages for medical negligence against a doctor or a hospital. **Section 69(1)** of the Consumer Protection Act, 2019 lays down the time limit within which a complaint for medical negligence must be filed as 2 years from the date of injury”.

CIVIL LIBILITY UNDER CONSUMER FORUM

“An aggrieved person can approach the consumer courts to file a case against the accused person and the hospital. “In Indian Medical Association vs. V.P. Santha the Hon'ble Supreme Court observed that the medical practitioners are covered under the CPA, 1986 and the medical services rendered by them should be treated as services under section 2 of the CPA, 1986. Similarly, under the new Consumer Protection Act, 2019, the medical services will fall under the ambit of services as mentioned in section 2 of the new Act. Any matter in medical negligence on the part of the service provider will be considered as deficiency under section 42 of the new Consumer Protection Act, 2019. Any aggrieved person can claim damages for medical negligence against a doctor or a hospital. Section 69 of the CPA, 2019 lays down the time limit within which a complaint for medical negligence must be filed as 2 years from the date of injury”.

CRIMINAL LIBILITY

“Under various provisions of IPC 1860 any person who acts negligently or rashly that results in threat to human life or personal safety or; results in death of a person then the person will be punished with imprisonment and/or fine”.

“The aggrieved party will first file a complaint with the local police authority against the concerned person/persons. If no action is taken, the aggrieved party can file a criminal complaint under CR.P.C, 1973”.

CONCLUSION

“The patients while in pain approach the doctors for their treatment with a simple hope of speedy recovery. However, sometimes there are situations where the treatment does not go as planned, it may be because the result of natural course of life or due to the doctor's fault. One thing which should be kept in mind is the fact that even they are humans and prone to making mistakes. However, any harm due to the negligent act on part of the doctor or medical staff will attract liability. Any person aggrieved due to the medical negligence will approach the abovementioned authorities/courts for compensation”.

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