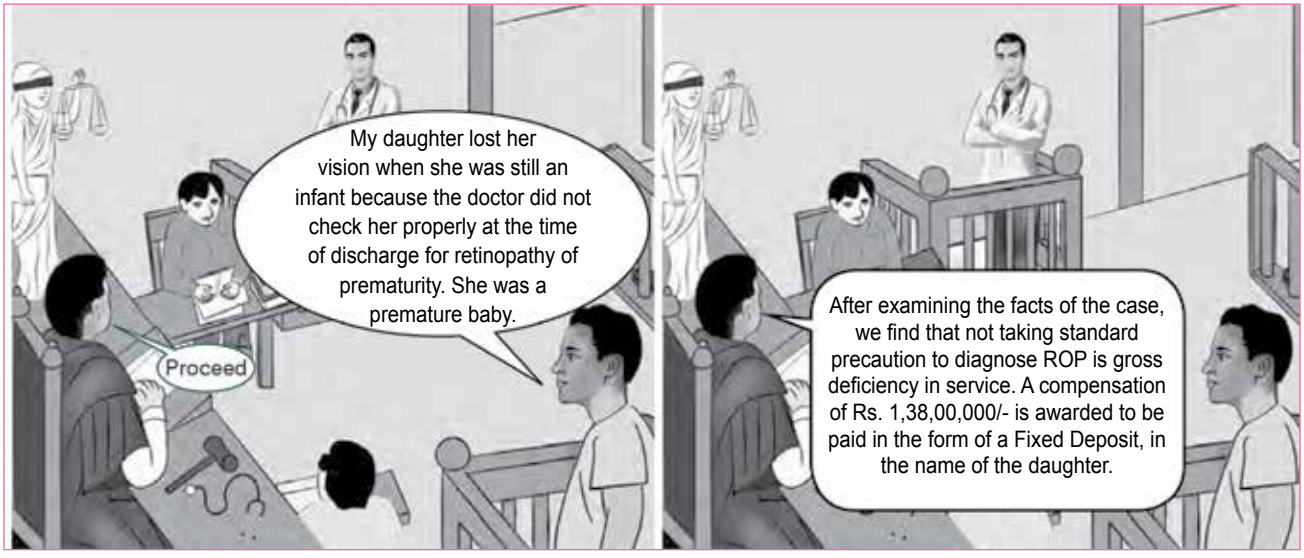
Deficiency of Service is Gross Negligence



Lesson: In *V. Krishnakumar vs State of Tamil Nadu & Ors. Civil Appeal No. 5402 of 2010*, the Supreme Court of India observed: "We agree with the findings of the NCDRC that the respondents were negligent in their duty and were deficient in their services in not screening the child between 2 and 4 weeks after birth when it is mandatory to do so and especially since the child was under their care."

COURSE OF EVENTS

- 30.8.1996: The appellant's wife was admitted in Hospital 'X' (*hereinafter referred to as Respondent No. 1*), where she delivered a premature female baby weighing 1,250 g in the 29th week of pregnancy. The infant was placed in an incubator in intensive care unit (ICU) for about 25 days. The baby was administered 90-100% oxygen at the time of birth and underwent blood exchange transfusion a week after birth.
- 23.9.1996: The mother and the baby were discharged.
- 30.10.1996: The mother and the baby visited the hospital at the chronological age of 9 weeks.
- Follow-up treatment, from 4 to 13 weeks of chronological age, was administered at the home of the appellant by Dr 'A' (*hereinafter referred to as Respondent No. 4*) of the Hospital.
- At 14-15 weeks of chronological age, the baby was checked up by Dr 'B' (*hereinafter referred to as Respondent No. 3*) of the Hospital at his private clinic.

SOME SALIENT COURT OBSERVATIONS

- "*… the only advice given by Respondent No. 4 was to keep the baby isolated and confined to the four walls of the sterile room so that she could be protected from infection. What was completely overlooked was a well-known medical phenomenon that a premature baby who has been administered supplemental oxygen and has been given blood transfusion is prone to a higher risk of a disease known as the Retinopathy of Prematurity (hereinafter referred to as 'ROP'), which, in the usual course of advancement makes a child blind. Respondent No. 3 also did not suggest a check-up for ROP.*"
- "*… the disease occurs in infants who are prematurely born and who have been administered oxygen and blood transfusion upon birth and further, that if detected early enough, it can be prevented… The disease advances in severity through five stages: 1, 2, 3, 4 and 5 (5 being terminal stage).*" Stage 5 of ROP is complete blindness.
- Some material relevant to the need for check-up for ROP for an infant is: "*All infants with a birth weight <1,500 g or gestational age <32 weeks are required to be screened for ROP.*" Being premature and weighing

only 1,250 g at birth, the child was a high-risk candidate for ROP. The order of the National Consumer Disputes Redressal Commission (NCDRC) had stated that "*Most ROP is seen in very low-birth weight infants, and the incidence is inversely related to birth weight and gestational age. About 70-80% of infants with birth weight <1,000 g show acute changes, whereas above 1,500 g birth weight the frequency falls to <10%.*" The Court regarded this as an undisputed fact.

- The Respondents, in their defence, stated that there were no deformities at the time of delivery and management and the appellant had been asked to attend postnatal OPD, which she did not comply with. They had mentioned in the discharge summary as follows: "*Mother confident; informed about alarm signs; 1) to continue breastfeeding, 2) to attend postnatal OPD, on Tuesday.*"
- The Court agreed with the observations of NCDRC, "*… the said remarks are only a hastily written general warning and nothing more. After a stay of 25 days in the hospital, it was for the hospital to give a clear indication as to what was to be done regarding all possible dangers which a baby in these circumstances faces. It is obvious that it did not occur to the respondents to advise the appellant that the baby is required to be seen by a pediatric ophthalmologist, since there was a possibility of occurrence of ROP to avert permanent blindness. This discharge summary neither discloses a warning to the infant's parents that the infant might develop ROP against which certain precautions must be taken, nor any signs that the Doctors were themselves cautious of the dangers of development of ROP…*"
- The Court regarded the Respondents' contention that the appellant did not follow-up properly as "unfortunate" and termed it as "*… a desperate attempt to cover up the gross negligence in not examining the child for the onset of ROP, which is a standard precaution for a well-known condition in such a case.*"
- The Court took into account the opinion of the Medical Board dated 21.8.2007, which included four ophthalmologists of AIIMS, New Delhi, constituted in pursuance of the order of the NCDRC, which stated "*… The ROP usually starts developing 2-4 weeks after birth when it is mandatory to do the first screening of the child. The current guidelines are to examine and screen the babies with birth weight <1,500 g and <32 weeks gestational age, starting at 31 weeks post-conceptional age (PAC) or 4 weeks after birth whichever is later…*" The Court also observed that this report clearly showed that "*… in the present case, the onset of ROP was reasonably foreseeable… it is well-known that if a particular danger could not reasonably have been anticipated it cannot be said that a person has acted negligently, because a reasonable man does not take precautions against unforeseeable circumstances...*"
- The report also said that "*it may not be possible to exactly predict which premature baby will develop ROP and to what extent and why.*" This in itself emphasises the need for a check-up in all such cases. "*In fact, the screening was never done. There is no evidence whatsoever to suggest to the contrary...*"
- ROP was discovered incidentally at the time of DPT vaccination when the infant was 4½ months old. The Appellant then consulted several doctors and hospitals in the country and even travelled to the US, where he "*incurred enormous expenses for surgery … but to no avail.*"
- Regarding quantification of compensation, the Court said, "*Indisputably, grant of compensation involving an accident is … based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong… It must necessarily result in compensating the aggrieved person for the financial loss suffered due to the event, the pain and suffering undergone and the liability that he/she would have to incur due to the disability caused by the event.*"
- The Court took note of the past medical expenses incurred by the appellant in the treatment and litigation including the income lost by the mother, "*… who became her primary caregiver and was thus prevented from pursuing her own career.*" The Court directed the respondents to pay this amount (Rs. 42,87,921/-) along with interest at the rate of 6% p.a. from the date of filing of the petition before the NCDRC till the date of payment.
- The Court also considered the necessary future care, education, pain and suffering, medical expenses including inflation in the future medical costs and awarded a sum of "*…Rs. 1,37,78,722.90/- rounded to Rs. 1,38,00,000/-… We direct that the said amount …. shall be paid, in the form of a Fixed Deposit, in the name of …. We are informed that the said amount would yield an approximate annual interest of Rs. 12,00,000/-.*"
- The Court did not absolve the State of Tamil Nadu under its Dept. of Health (*hereinafter referred to as Respondent No. 2*) from its liability "*…It is settled*

law that the hospital is vicariously liable for the acts of its doctors" vide Savita Garg vs. National Heart Institute, (2004) 8 SCC 56, Balram Prasad's case (supra) and Achutrao Haribhau Khodwa v. State of Maharashtra, (1996) 2 SCC 634.

FINAL JUDGEMENT

- The Supreme Court agreed with the findings of the NCDRC and held that there was no error of judgement as given by the Commission. The Court also held that "*the respondents were negligent in their duty and were deficient in their services in not screening the child between 2 and 4 weeks after birth when it is mandatory to do so and especially since the child was under their care…*" Since the child had become blind for life "*… It is, thus, obvious that there should be adequate compensation for the expenses already incurred, the pain and suffering, lost wages and the future care that would be necessary while accounting for inflationary trends.*"
- The Court apportioned the liability of Rs. 1,38,00,000/- among the respondents to be paid within 3 months from the date of this judgement, failing which the said sum would attract a penal interest @ 18% p.a.
- "*Rs. 1,30,00,000/- shall be paid by Respondent Nos. 1 and 2 jointly and severally…*
- *Rs. 8,00,000/- shall be paid by Respondent Nos. 3 and 4 equally … and Rs. 4,00,000/- by Respondent No. 4.*"
- The Court also apportioned the past medical expenses Rs. 42,87,921/- in the following manner:
- "*Respondent Nos. 1 and 2 are directed to pay Rs. 40,00,000/- jointly, along with interest @ 6% p.a. from the date of filing before the NCDRC; and*
- *Respondent Nos. 3 and 4 are directed to pay Rs. 2,87,921/- in equal proportion, along with interest @ 6% p.a. from the date of filing before the NCDRC.*"

"If Respondent Nos. 1 and 3 have made any payment in accordance with the award of the NCDRC, the same may be adjusted…"

Two Civil Appeals were filed before the Supreme Court; one (Civil Appeal No. 8065 of 2009) by the Appellant for enhancement of the amount of compensation awarded by the NCDRC (Rs. 5,00,000/-) and the other by Respondent No. 2 (Civil Appeal No. 5402 of 2010) against the judgement of the NCDRC dated 24th May 2009. Both the appeals were disposed off in this common judgement. "*Accordingly, Civil Appeal No. 8065 of 2009 is allowed in the above terms and Civil Appeal No. 5402 of 2010 is dismissed. No costs.*"

REFERENCE

1. V Krishnakumar versus State of Tamil Nadu & Ors Civil Appeal No. 8065 of 2009 with Civil Appeal No. 5402 of 2010 Supreme Court of India dated July 1, 2015.