The Patient was not Getting Cured. Can this be Termed as Medical Negligence?

No doctor can give 100% guarantee about the treatment or surgery. The only assurance which a doctor can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence.

The Hon'ble Apex Court in various judgments, has duly held that no guarantee is given by any doctor or surgeon that the patient would be cured.

1. In the matter titled as **"P. B. Desai versus State of Maharashtra, AIR 2014 SC 795**, the Hon'ble Apex Court has held that:

   "It is not necessary for us to divulge this theoretical approach to the doctor-patient relationship, as that may be based on model foundation. Fact remains that when a physician agrees to attend a patient, there is an unwritten contract between the two. The patient entrusts himself to the doctor and that doctor agrees to do his best, at all times, for the patient. Such doctor-patient contract is almost always an implied contract, except when written informed consent is obtained. While a doctor cannot be forced to treat any person, he/she has certain responsibilities for those whom he/she accepts as patients. Some of these responsibilities may be recapitulated, in brief:

   a. to continue to treat, except under certain circumstances when doctor can abandon his patient;

   b. to take reasonable care of his patient;

   c. to exhibit reasonable skill: The degree of skill a doctor undertakes is the average degree of skill possessed by his professional brethren of the same standing as himself. The best form of treatment may differ when different choices are available. There is an implied contract between the doctor and patient where the patient is told, in effect, "Medicine is not an exact science. I shall use my experience and best judgment and you take the risk that I may be wrong. I guarantee nothing."

   d. Not to undertake any procedure beyond his control: This depends on his qualifications, special training and experience. The doctor must always ensure that he is reasonably skilled before undertaking any special procedure/treating a complicated case.

   e. Professional secrets: A doctor is under a moral and legal obligation not to divulge the information/knowledge which he comes to learn in confidence from his patient and such a communication is privileged communication."

2. In the matter **Malay Kumar Ganguly vs. Sukumar Mukherjee & Ors. AIR 2010 SC 1162, the Hon'ble Supreme Court of India** has held that:

   "INDIVIDUAL LIABILITY OF THE DOCTORS There cannot be, however, by any doubt or dispute that for establishing medical negligence or deficiency in service, the courts would determine the following:

   i. No guarantee is given by any doctor or surgeon that the patient would be cured.

   ii. The doctor, however, must undertake a fair, reasonable and competent degree of skill, which may not be the highest skill.

   iii. Adoption of one of the modes of treatment, if there are many, and treating the patient with due care and caution would not constitute any negligence.

   iv. Failure to act in accordance with the standard, reasonable, competent medical means at the time would not constitute a negligence. However, a medical practitioner must exercise the reasonable degree of care and skill and knowledge which he possesses. Failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence.

   v. In a complicated case, the Court would be slow in contributing negligence on the part of the doctor, if he is performing his duties to be best of his ability. Bearing in mind the aforementioned principles, the individual liability of the doctors and hospital must be judged."

3. In the landmark judgment of **Jacob Mathew Petitioner v. State of Punjab & Anr. 2005 (3) CPR 70 (SC) the Hon'ble Supreme Court** has held that:

   "Para 28: No sensible professional would intentionally commit an act or omission which would result in loss or

injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career. Even in civil jurisdiction, the rule of res ipsa loquitur is not of universal application and has to be applied with extreme care and caution to the cases of professional negligence and in particular that of the doctors. Else it would be counterproductive.

Simply because a patient has not favorably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of res ipsa loquitur."

4. In the matter titled as **"Martin F. D'Souza versus Mohd. Ishfaq, 2009 (3) SCC 1" the Hon'ble Supreme Court** has held that:

   "*Para 124: It must be remembered that sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held to be guilty of medical negligence, unless there is some strong evidence to suggest that he is.*"

5. In the matter titled as **"Lok Nayak Hospital versus Prema, RFA No. 56/2006" the Hon'ble High Court of Delhi vide judgment dated 06.08.2018** has held that:

   "*8. Firstly, it is to be noted that the only allegation of negligence alleged by the respondent/plaintiff against the appellant/defendant is that the tubectomy/ sterilization operation failed.* ***Since medically there is never a 100% chance of success in sterilization operations, the mere fact that the operation was not successful, that by itself cannot be a reason to hold the appellant/defendant and its doctors guilty of negligence****. This aspect is no longer res integra and is so held by a Division Bench of this Court in the case of Smt. Madhubala Vs. Govt. of NCT of Delhi, 118 (2005) DLT 515 (DB).*"

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Hearing Loss and Dementia

Older adults with moderate to severe hearing loss are at risk of developing dementia, according to a study published online January 10 in the *Journal of the American Medical Association*.[1,2] Persons using hearing aids had lower risk of dementia.

In this study, Huang et al from the Cochlear Center for Hearing and Public Health at Johns Hopkins Bloomberg School of Public Health investigated the association of hearing loss and use of hearing aids with dementia among 2,413 participants selected from the ongoing National Health and Aging Trends Study (NHATS) database. The study subjects were aged ≥60 years and nearly half were older than 80 years. Information was collected from the participants via interviews and at-home testing using a portable audiometer. One third of the subjects (33.4%) had normal hearing, 36.7% had mild hearing loss, while nearly 30% had moderate to severe loss. Participants with moderate to severe hearing loss were more likely to be older, male and less educated.

The overall prevalence of dementia in the study was 10.2%. Data analysis showed a clear link between dementia and hearing loss, which increased as the severity of hearing impairment increased. Among persons with no hearing impairment, the prevalence of dementia was 6.1%. Among patients with mild hearing loss, the prevalence was ~9%. But among those with moderate to severe hearing loss, the prevalence was 16.5%. Compared to those with normal hearing, 853 participants with moderate to severe hearing loss had 61% higher risk of developing dementia with prevalence ratio 1.61. However in this group, the use of hearing aids reduced dementia risk by 32% (prevalence ratio 0.68).

These findings call for public health policy makers to improve access to screening for hearing impairment and also availability of hearing aids.

References

1. Huang AR, et al. Hearing loss and dementia prevalence in older adults in the US. JAMA. 2023;329(2):171-3.
2. Dementia tied to hearing loss. January 10, 2023. Available from: https://www.medpagetoday.com/neurology/dementia/102578. Accessed January 11, 2023.