Medicolegal Insights

CAN DOCTOR/SURGEON/CONSULTANT BE HELD LIABLE FOR NOT RENDERING A SERVICE OR FACILITY, WHICH IS NOT AVAILABLE IN THE HOSPITAL?

The doctor cannot be held liable for not rendering a facility, which was not available in the hospital. If the hospital knowingly fails to provide some amenities that are fundamental for the patients, then it would certainly amount to medical malpractice; but for the same, the doctor cannot be held liable for medical negligence.

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

"We must bear in mind that negligence is attributed when existing facilities are not availed of. Medical negligence cannot be attributed for not rendering a facility which was not available. In our opinion, if hospitals knowingly fail to provide some amenities that are fundamental for the patients, it would certainly amount to medical malpractice. As it has been held in Smt. Savita Garg (supra), that a hospital not having basic facilities like oxygen cylinders would not be excusable. Therein this Court has opined that even the so-called humanitarian approach of the hospital authorities in no way can be considered to be a factor in denying the compensation for mental agony suffered by the parents. The aforementioned principle applies to this case also in so far as it answers the contentions raised before us that the three senior doctors did not charge any professional fees."

In the matter of **Savita Garg vs. Director, National Heart Institute AIR 2004 SC 5088, the Hon'ble Supreme Court of India** has held that:

"The patients once they are admitted to such hospitals, it is the responsibility of the said hospital or the medical institutions to satisfy that all possible care was taken and no negligence was involved in attending the patient. The burden cannot be placed on the patient to implead all those treating doctors or the attending staff of the hospital as a party so as to substantiate his claim. Once a patient is admitted in a hospital it is the responsibility of the Hospital to provide the best service and if it is not, then hospital cannot take shelter under the technical ground that the concerned surgeon or the nursing staff, as the case may be, was not impleaded, therefore, the claim should be rejected on the basis of non-joinder of necessary parties. In fact, once a claim petition is filed and the claimant has successfully discharged the initial burden that the hospital was negligent, as a result of such negligence the patient died, then in that case the burden lies on the hospital and the concerned doctor who treated that patient that there was no negligence involved in the treatment. Since the burden is on the hospital, they can discharge the same by producing that doctor who treated the patient in defence to substantiate their allegation that there was no negligence. In fact, it is the hospital who engages the treating doctor thereafter it is their responsibility. The burden is greater on the Institution/Hospital than that of the claimant. The institution is private body and they are responsible to provide efficient service and if in discharge of their efficient service there are couple of weak links which has caused damage to the patient then it is the hospital which is to justify the same and it is not possible for the claimant to implead all of them as parties."

IS IT OBLIGATORY FOR HOSPITALS TO PROVIDE COPY OF THE CASE RECORD TO PATIENT OR HIS LEGAL REPRESENTATIVE?

Yes, it is obligatory for doctors, hospitals to provide the copy of the case record or medical record to the patient or his legal representative.

The Medical Council of India (MCI) has imposed an obligation on doctors as per the Indian Medical Council (Professional Ethics, Etiquette & Conduct) Regulations, 2002 notified on 11th March 2002, amended up to December 2010 to maintain the medical record and provide patient access to it.

Maintenance of Medical Records:

1.3.1. Every physician shall maintain the medical records pertaining to his/her indoor patients for a ***period of three years*** *from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.*

1.3.2. If any request is made for medical records either by the patients/authorized attendant or legal authorities involved, the same may be duly acknowledged and documents ***shall be issued within the period of 72 hours.***

With the enforcement of the MCI Regulations, 2002 it is made clear that the patient has a right to claim medical records pertaining to his treatment and the doctors/ hospitals are under obligation to maintain them and provide them to the patient on request.

In **Kanaiyalal Ramanlal Trivedi vs. Dr Satyanarayan Vishwakarma I (1997) CPJ 332 (Guj), The Hon'ble High Court of Gujarat** has held that the hospital and doctor were held guilty of deficiency in service as case records were not produced before the court to refute the allegation of a lack of standard care.

In **Raghunath Raheja vs. Maharashtra Medical Council, AIR 1996 Bom 198, Bombay High Court** upheld the right of patient to medical record very emphatically.

In the matter titled as **P.P. Ismail v K.K. Radha 1999 CPJ 99 (NC), the Hon'ble National Commission for Consumer Dispute Redressal Forum** has held the hospital vicariously liable for the negligent action of the doctor on the basis of the bill showing the professional fees of the doctor and the discharge certificate under the letterhead of the hospital signed by the doctor

In **S.A. Quereshi vs. Padode Memorial Hospital and Research Centre II 2000. CPJ 463** (Bhopal) it was held that the plea of destroying the case sheet as per the general practice of the hospitals appeared to the court as an attempt to suppress certain facts that are likely to be revealed from the case sheet.

In case of **Dr Shyam Kumar vs. Rameshbhai, Harmanbhai KachiyaI (2006) CPJ 16 (NC), the Hon'ble National Commission of Consumer Dispute Redressal Forum** has held that not producing medical records to the patient prevents the complainant from seeking an expert opinion and it is the duty of the person in possession of the medical records to produce it in the court and adverse inference could be drawn for not producing the records.

In **Medi. Supri. Loknayak Jaiprakash Narayan Hospital & Ors. V/s. K.M. Santosh. F.A. No. 244/2008, decided on 14/03/2016, the National Consumer Disputes Redressal Commission** has observed that it is the primary responsibility of the hospital to maintain and produce patient records on demand by the patient or appropriate judicial bodies. The patient or their legal heirs can ask for copies of the treatment records that have to be provided within 72 hours. The hospital can charge a reasonable amount for the administrative purposes including photocopying the documents. Failure to provide medical records to patients on proper demand will amount to deficiency in service and negligence.

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Lancet: Nutrition Support Cuts TB, Deaths in India

A study published in the global health journal *The Lancet* found that a monthly food basket with enough protein and efficient treatment can cut the number of new tuberculosis (TB) cases among family members of TB patients in India by almost half.

The study conducted in household contacts of 2,800 patients with confirmed pulmonary tuberculosis in 28 TB units of the National Tuberculosis Elimination Programme in four districts of Jharkhand showed that these patients gained more weight when they received a monthly food basket with enough protein and effective treatment.

A group in the trial with a high frequency of severe undernutrition received nutritional supplementation. The researchers discovered that weight increase was significantly connected with a lower risk of TB death, especially in the first 2 months. The control group got a control group, whereas the intervention group received monthly food rations and micronutrients.

Results showed a relative decrease in TB incidence from 39% (all types) to 48% (pulmonary TB proven by microbiology) in the intervention group. To stop one case of TB, nutritional supplements would need to be given to 30 homes (111 household contacts). In these circumstances, nutritional assistance is crucial to patient-centered care to enhance treatment success.

In India, HIV-negative people contracted TB at a rate of 3 million cases per year and died from the disease at a rate of 4,94,000. According to India's National Strategic Plan for TB Elimination, the incidence of TB would decrease by 80% by 2025, and the mortality rate will decrease by 90%.

(*Source: https://www.tribuneindia.com/news/health/nutrition-support-shown-to-prevent-tb-related-deaths-in-india-lancet-study-533582*)