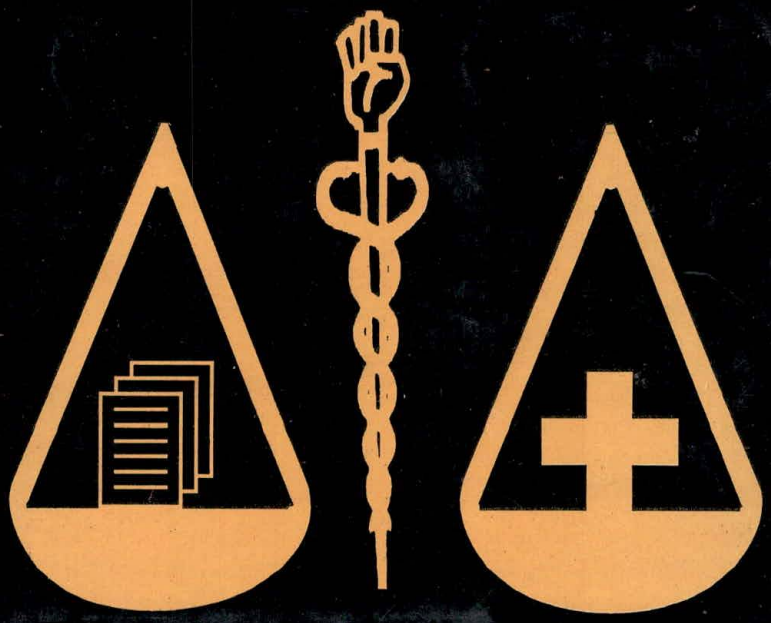
HEALTH RELATED CASES UNDER CONSUMER LAW



Voluntary Health Association of India

HEALTH RELATED CASES UNDER CONSUMER LAW

Complied by

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Mathew N.M
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FOREWORD

The enactment of a unique piece of legislation in 1986 called Consumer Protection Act, has indeed proved to be a big boom for the consumer movement in India. It was instrumental in bringing justice to thousands of aggrieved consumers during the past few years of its existence.

Whether medical services comes under the purview of CPA or not, remains a hotly debated subject, even today, between consumer activists and doctors. Opinions and legal interpretations have widely varied, so much so that the Supreme Court is presently seized of this matter.

Medical services is a gray area as far as consumer protection is concerned. Consumers are mystified by the complexities involved in this branch of science. But, of late, because of legal scrutiny of medical negligence cases in consumer courts, lot of things are coming to light.

We hope this publication "Health Related Cases Under Consumer Law" will promote consumer awareness and help obtain more transparency and accountability in medical services. This should also give sufficient materials for the practicing doctors to understand the real implications of the Law and to provide them with necessary clues for safe handling of intricate medical cases.

VHAI stands for a healthy relationship between patients and doctors based on mutual trust and respect for each others rights.

ALOK MUKHOPADHYAY
EXECUTIVE DIRECTOR

HEALTH AND CONSUMER PROTECTION ACT

JOSE K. UTHUP

Doctors consider the Consumer Protection Act, 1986 as a "snake in the grass." The Indian Medical Association is vehemently protesting against their services being brought under the purview of the C.P. Act. But I feel that these agitations and the practice of defensive medicine are are all unnecessary if the doctors understand the Act properly. In such an event, they will change their whole outlook towards CPA. In this regard we can examine the case laws and verdicts of the various State Consumer Courts.

A mistaken diagnosis is not necessarily a negligent diagnosis

This is a well established principle guiding the Consumer Courts. In the case "Navaneethan Vs. Dr. Rathinaswamy and Other", the Madras State Commission quoted the famous words of Snna A.C.J. as "No human being is infallible and in the present state of science even the most eminent specialist may be at fault in detecting the true nature of a diseased condition. A practitioner can only be liable in this respect if his diagnosis is so palpably wrong as to prove negligence, that is to say, if this mistake is of such a nature as to imply absence of reasonable skill and care on his part, regard being had to the ordinary level of skill in the practitioner."

It is an admitted fact that error of judgement is not a crime in Criminal or Civil law. Wrongful diagnosis will not amount to a negligence. The law appreciates that the medical practitioner is not obliged to achieve success in every case he treats. His only duty according to the law is to exercise reasonable skill and care.

In a medical situation where the best method of treatment is not available to the doctor, he isjustified in taking recourse to the next course of action, even if the end result turns out to be negative. The doctor will not be held negligent. (Refer case No. 7 in this book - Iqbal Khan Vs. The Child Trust Hospital, Madras). In Smt. Dipli De Sarkar Vs. Steel Authority of India Ltd. Rourkela Steel Plant and ORS case, the Orissa State Commission upheld the famous Jurist Lord Dennig's words "you must not therefore find the doctor negligent simply because something happens to go wrong." (Refer case No. 43 in this book)

The Delhi State Commission in a case Miss. Gurpreet Kaur Vs. Dr. R.K. Bhutani the court held "where the doctor has not been found negligent in providing treatment to the patient the complaint for loss and suffering by such patient before Consumer Forum is liable to be rejected. (Refer case No. 36 in this book).

Guarantees care not care

The doctors are now applying defensive medicine while treating patients for fear of the C.P. Act. This is only because of the ignorance of law. The law appreciates that the medical practitioner is not obliged to achieve success in every case he treats. His only duty according to the law is to exercise reasonable skill and care. He guarantees care not cure. This is a well established norm in Consumer Court verdicts. This fact has been established by The Gujarat State Commission in Mashabai Vs. Parmar Bala Bhai and Other case. (Ref. case No. 40 in this book). The Commission observed "it may be noted that in the distant villages where the modern facilities are not available and the doctors have to treat the patients with available means and resources, if the wild allegations of negligence are made, time will come where no doctor will take the patients in the hospital even if they are serious and will hesitate to give even primary treatment and thereby avoid the possibility to expose himself to wild allegations, negligence and getting dragged in to the court".

When two different line of treatments are available to the doctor and he adopts a particular course, he cannot be held negligent even if something goes wrong. This principle was clearly demonstrated in a judgement given by the Tamil Nadu State Commission. (Refer case No 44 in this book) in the case of R. Gopinath Vs. Eskeycee, Medical Foundation and Other. The State Commission remarked that "a doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art - putting it the other way round, a man is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion who would take a contrary view."

The other complaint in this case was regarding the consent. The consumer court held that "in the instant case the only treatment, for the injuries suffered by the complainant was surgery and there can therefore be no ambiguity in the consent given by the complainant when he himself has been quite conscious and voluntarily given the consent, and there is absolutely no necessity to take the consent of his wife or other relations."

It may also be interesting to verify some of the cases decided in favor of the consumers. In Smt. R. Lalitha Vs. M. Leena case Tamil Nadu State Commission held that rash and reckless act of the hospital amount to depriving of service.(Refer case No. 17 in this book).

The State Commission agreed with the view of Lord Newart C.J. when he re-

marked that "even a qualified man may be held liable for recklessly undertaking a case which he knew or should have known to be beyond his powers or for making his patient the subject of reckless experiments". The Commission noted that here was a case where the opposite party who was merely a nurse and mid-wife had taken upon herself, the management of a situation pregnant with dire consequences. The opposite party had acted rashly, recklessly and with culpable negligence. The consequences must therefore, lie squarely on her shoulders".

Another example is the famous case decided by the Kerala State Commission in Kunji Pathumma Vs. Dr. Sr. Louie and another upheld by the National Consumer Disputes Redressal Commission.(Refer case No. 11 in this book).

The health services in our community, like pharmaceutics is an Industry in itself - it is profit oriented. Pharmaceutics is the most profitable industry in the world. There is a flood of inferior, banned and substandard drugs in the market. Many doctors support this industry by their dependency on it for favours. Now-a-days, a busy doctor examines 50 to 60 patients in 3 hours. The piece meal and de-humanised health care causes a lot of consumer dissatisfaction and is responsible for litigations. Now there is no difference between hospital authorities who accept a patient for treatment and railway or shipping authorities who accept a passenger for carriage.

Multiplicity of litigation

The main complaint of the doctors is about their being unnecessary dragged to consumer courts, their reputation and income thus being adversely affected for no fault of theirs. This suspicion has no base. The recent survey conducted by the Civil Supply Secretary of Kerala revealed that the Kottayam Consumer Forum is the top most Forum in handling cases. The monthly average is 176 cases. From 3rd October, 1991 to 31st August, 1994, 5547 cases were filed and 4772 cases were settled. It is interesting to note that out of this 5547 cases there were only 34 cases against the doctors and hospitals. At the same time the doctors filed 114 complaints against electricity, water authority, telephone dept, dealers etc. The simple, speedy and free remedies provided by Consumer Courts which are availed of by the doctors are three times more than the grievances filed against them. For the last three years no false complaint was allowed in the Forum. So the suspicion and fear of the doctors about CPA are totally unfounded and not based on facts.

Even after so many years of Independence, it is a pity, that we do not have a

Common Civil Code. This is a question which needs to be addressed to. If we exclude some professions from the purview of an Act, we will be doing a great disservice to our country. In a democratic country all citizens are equal. No profession is superior to another. Equality of law should not only be in books but also in practice.

The statutory bodies like Indian Medical Council, Bar Council etc. have failed to fulfill the aspirations of the hapless consumers. They still remain as mere "Anti Corruption Departments". Under these circumstances, the Consumer Protection Act is a little candle in the darkness. We can easily put it off but it is difficult to rekindle.

It is, therefore, of paramount importance that the doctors should acquaint themselves fully with this Law, which will help them get rid of their unwarranted worries and tensions. Good doctors who form the vast majority of the medical profession need not fear the Act at all.

Mr. Jose K. Uthup is a sitting Member of the Kottayam (Kerala), District Forum.

MEDICAL SERVICES AS IF CONSUMERS MATTERED

MATHEW N. M

The Consumer Protection Act, 1986 has rightly been hailed as the single most important factor in taking consumer awakening in India to its present level. Its wide ranging ramifications have resulted in an unprecedented energy and hope among the so far unorganized and gullible consumer community. Emergence of a large number of resistance groups and consumer organisations all over the country bears testimony to this fact.

Let us now look at health services from the consumers point of view. All of us need timely medical care during illness at an acceptable level of quality, price and easiness. Quality of our life heavily depends on the kind of medical goods and services we have access to. We are the health consumers and we deserve fair play and justice from health care services.

GOVERNMENT HEALTH SERVICES

Government is the largest provider of medical facilities in the country through its wide network of Research Centres, Medical Colleges, District Hospitals, Community/ Primary Health Centres etc. But the over stretched Government sector has become stagnant and insufficient to meet the health needs of the people. Although there has been a phenomenal growth in Government infrastructure after Independence, it is evident that the disillusionment and frustration with the growing ineffectiveness of this sector is gradually driving people to the profit oriented private sector. According to an Indian Council for Medical Research study in 1988 only 15 per cent of Primary Health Centres in the country had the requisite personnel and facilities. Many a time the only health service available to the needy people from the health centre is a slip of paper with names of medicines which they have to get from shops outside. Even in the city hospitals the conditions are far from satisfactory. There is an air of general neglect all round. The staff are arrogant with a stiff necked posture. The emergency services are ill-equipped and lacks essential medicines and facilities. There is over congestion leading to un-hygienic surroundings. Therefore, patient satisfaction from these services is very very low, if not absent altogether.

Health consumers in this country, in many ways, get a raw deal due to deficiency in services. Scarcity of health facilities makes their position weak and keep them always at the receiving end. This disadvantage of the consumers is partly re-

sponsible for making the health system irresponsive and unanswerable. Several incidences of medical negligence are being reported from both Government and private hospitals, ranging from simple carelessness to willful cheating and criminal indulgences. Many Govt. doctors get into private practice which adds to the woes of the poor consumers. The lure of the lucre naturally diverts the doctors attention from the Govt. hospital services.

HEALTH SERVICES OUTSIDE GOVERNMENT SECTOR

The gap between the demand and supply of medical services is filled by the non governmental sector of charitable and private hospitals. They are supposed to be more responsive to patients, but for a price. It has been noticed that about 76% of all the out patient cases are handled by this sector. Hence its vital role in the health management of the country.

But is the private sector on the consumers side? Opinions vary. Of late this sector has come under lot of flak by allegations of callousness, overcharging, poor quality service, wrong diagnosis, unnecessary medical investigations, prolonged hospitalizations, total lack concern for medical ethics and presence of quackery. There is no standardization of charges or practicing methods. Consumers have reasons to be frustrated with the lack of transparency in the whole gamut of patient care and other connected issues. The mushrooming growth of business houses in medical care mostly in the curative sphere is not necessarily a sign of growth of health care. In the absence of any social audit mechanism or effective legal framework to deal with this problem, consumer interests are seriously at risk.

CONSUMER PROTECTION ACT, 1986 AND GOVT. HEALTH SERVICES

The Consumer Protection Act at present exclude Government Medical Services from in its ambit purely because it is not paid for by the patients. There is no hiring of the service as the treatment is given free of cost and, therefore, CPA does not apply to the Govt. sector. Consumers and doctors outside the Govt. sector are agitated about this double standard. According to them, a negligence is a negligence irrespective of whether it takes place in a Govt. hospital or a private hospital, if so why only the latter is brought under CPA? Accountability should be equal for all and the Law should not be partial. Patient's rights are violated in both the cases.

A recent incident clearly supports their argument. The scene is the prestigious All India Institute of Medical Sciences, New Delhi. On 11th July, 1994, a 30 year old

women named Bimla underwent Mastectomy and one of her healthy breasts was removed by mistake. When the clinical examination of the patient revealed nothing more than a small lump, doctors realised their mistake. The patient with breast cancer was another Bimla. The formar's OPD registration No. was 8807 and the latters 114391.

The only option currently available to the health consumers of the Govt. services is to approach Civil or Criminal Courts for justice. Quick remedies are not available through these over burdened Courts. It takes several years and involves phenomenal costs for the consumers to get redressal, negating the very spirit of consumer protection. The poor patients who flock to Govt. hospitals for free care, bearing all inconveniences, can never think of approaching the above courts for obvious reasons. Even CPA holds no promise for them at present.

The Committee on Subordinate Legislation of the Lok Sabha, in its 10th report on consumer protection tabled in the House on 24th August this year, expressed grave concern on keeping the Government doctors and other medical personnel outside the purview of the Consumer Protection Act and asked the Government to reconsider the matter. They argue that this amounts to discrimination against medical professionals in the private sector. But as of today, there is no sign of any positive move on the part of the Government to bring Govt. medical services under the Consumer Protection Act. Whereas, the Ministry of Civil Supplies, Consumer Affairs and Public Distribution System of the Government of India is earnestly trying to resolve this imbroglio in the interests of the patients, it is interesting to note that the Ministry of Health and Family Welfare does not seem to be very keen on this for reasons best known to them. This is one area where the consumer activists should also be gravely concerned.

MEDICAL SERVICES UNDER CONSUMER PROTECTION ACT

From early 1990s, medical negligence cases started coming up in consumer courts. Doctors did not take kindly to being dragged into these courts. They saw serious threats to their profession freedom they have been enjoying practically unchallenged for long. The Doctors are mainly regulated by the Medical Council of India established under the MCI Act 1956, which is a body of doctors. MCI is a weak monitoring body with no authority to adequately punish the erring doctor or to compensate the medical victims. The CPA changed the whole scenario. It demanded accountability of doctors to the patients and compensation for the victims of doctor's negligence.

Now the doctors and their professional bodies are demanding review of MC

Act. They want MC machinery revamped almost on the same lines as in CPA, including compensation to the victims, setting up of medical tribunals-cum-disciplinary committees at the Centre, State and District levels comprising of doctors, legal experts, consumer representatives and other public figures. Some of them have also advocated initiating 'no-fault insurance' as prevalent in the US, wherein the patient pays a small amount on admission to the hospital and the rest of the premium shared by the institution and Government. In case death occurs during surgery, due to no fault of the doctor, the accumulated amount goes to the patient's family. What would come out of this new found doctors formulae is of considerable interest to the consumers.

Doctors argue that medical services do not come under the purview of the CPA as it has not been specifically mentioned in the Act. The scope of the Act as given in Section 2(o) says 'service of any description which is made available to potential users'. Secondly, they argued that doctor's service is 'a contract of personal service' which is exempted under this Law. Thirdly they argued that patients are not consumers as envisaged by CPA. The Act says 'consumer is a person who buys any goods or service for a consideration (price) which has been fully or partly paid or promised'. So any person availing of medical services in private hospitals by paying money becomes a consumer. Different consumer courts ruled differently on these issues, but generally the above arguments of the doctors were found untenable. In a land mark case of wrong diagnosis in a hospital in Kerala (Vasantha P. Nair Vs Cosmopolitan Hospitals in 1991) the State Commission and later the National Commission on 21.4.1992 set all these arguments at rest (Refer case No. 21 in this book).

Writ petitions challenging the applicability of CPA were filed in several High Courts by agitated doctors. Few High Courts ruled in favour of the patients but the Madras High Court in the case of Dr. C.S Subramanian Vs Kumarasamy & Ors - W.P No 14713 of 1991 etc. dated 17.2.94 ruled that the patient is not a consumer and medical services is a ' contract of personal service' which is outside the purview of the Act. The Court, however, did not extend this immunity to para medical services.

Now the scene has shifted to the Supreme Court. Hearing of the appeals filed by the Indian Medical Association and several specialists organisations challenging the inclusion of medical profession in CPA has started on 21 September, 1994. Consumer organisations are actively intervening in this matter.

As can be seen from the proceedings in the consumer courts the number of cases filed against medical services are very few compared to other complaints. Proven

cases are still fewer. The reason for this is that it is not easy to prove medical negligence because of the complexities involved. Medical services still remain mysterious to the consumers. Added to that is the respect and awe doctors command. So, many people do not dare to initiate action against the doctors.

In medical services, the consumer's Right to Choice and Information are severely restricted as the decisions are taken by a third party - the doctor. Thus the consumers hardly have any control on the quality and price of goods and services they are asked to avail of.

MEDICAL NEGLIGENCE

Unprincipled elements in the medical profession dilutes ethical standards and indulge in profiteering from people's miseries bringing disrepute to the entire profession. The business in medical care is overtaking the business of medical services. Doctors job is a very vital one as they deal with life and death. A lapse of the doctor may cost the patient dearly. Therefore the doctors should take their responsibilities seriously and if they do not, medical negligence litigations will result. Negligence is a tort, i.e. a wrong done by one person to another. In medical parlance it is defined as "a mistake by a medical practitioner which no reasonably competent and careful professional would have committed". When a doctor agrees to treat a patient, it is implied that he posses the required skill and knowledge. He should exercise reasonable care which is not the very highest nor the lowest. For things beyond his control especially the unexpected developments and inherent risks associated with medical cases, the doctor will not be held responsible. This is not negligence. Negligence is precisely the absence of a minimum skill or standard of medical attention expected of a competent doctor. Negligence can also occur if any doctor attempts to handle cases beyond his competency or training. Delay in attending to patients can also be considered negligence. The negligent doctor cannot go scot free. He has to pay for his acts of commission and omission. If there are elements of deliberate cheating or fraud on the patient the case assumes more serious nature. Consumer Courts tries to bring justice to the patients in such circumstances. The onus of proving the guilt of the doctors lie with the consumer, hence the success rates of such cases are limited.

For a successful claim in the consumer forum, the patients will have to prove negligence of the doctor in any of the following areas:

✧ negligent diagnosis

- ✧ negligent operation
- ✧ failure to listen to the problems of the patient
- ✧ negligent administration of drugs, injections (in wrong areas, breaking needles in the body etc.
- ✧ negligent prescription of drugs
- ✧ negligent exposure of the patient to risk of infections
- ✧ negligence in advice, meaning failure to warn and inform the patient about possible risks in the medicines or operations.
- ✧ negligent supervision on follow up of cases
- ✧ negligent facilities - in providing essential support systems, staff and other infrastructure
- ✧ negligent operation leaving instrument or swab inside the patient
- ✧ negligence in obtaining consent of the patient or authorised relatives.

The law is not against the honest and well meaning doctors who have so far sustained the system. An honest attempt by the doctor for the well being of the patient builds up good rapport between the patient and him which helps avoid unnecessary litigations. It is always safe for the doctor to explain to the patient the nature of the disease, treatment, risks involved and the financial implications. Standard medical practices should never be compromised. If somebody is in to blackmail or humiliate any doctor by filing a frivolous or vexatious case, the consumer courts have powers to take strong actions against such complainants by imposing penalties upto Rs 10 thousand on the complainant. But a case decided by the National Commission on September 9, 1994 made history of sorts. The complainant was asked to pay Rs 10000 each to the doctor and hospital who were implicated. The court found that the complainant had concealed the history of his heart ailments while getting treated for gastroenterology from Medical Research Centre, Bombay under Dr. N.H. Banka (Refer case No. 32 in this book).

In another case in September, 1994, the Kerala State Commission granted Rs 4000 to the family of a patient died of breast cancer. The complaint was that the Regional Cancer Centre delayed the result of the Carnico Embryonic Antigens (CEA) test for 74 days which prevented prompt treatment and the patient died due to it. The

Commission accepted that the delay in furnishing the result amounted to deficiency in service but the cause of death could not be attributed to it.

Fear of consumer courts leads to distrust between patient and doctor. Some doctors are inconvenienced by false cases. The solution to this problem is not by doing away with the law but careful application of the Law to act as deterrents against carelessness of doctors. Doctors going in for defensive medicines and taking up high value insurance cover etc. will harm the cause of consumers. Law is only a stick and the ideal situation is to do away with the need to use the stick.

LEGAL SAFEGUARDS FOR HEALTH CONSUMERS

Under the Fundamental Right to Life and Liberty (Article 21 of the Indian Constitution) and the Directive Principle (Article 47) and other laws of the land, patients can claim certain Rights in India. In other countries like UK and USA, the patients have their 'Bill of Rights'. A Working Group consisting of consumer activists and professionals is functioning under the Central Consumer Protection Council on the " Charter of Patient's Rights" for India.

The Patient's Rights can be broadly classified as follows:

1. Right to Health Care and Humane Treatment. This entitles the patient to receive timely medical attention from an adequately qualified health personnel in dignity and respect.

2. Right to Give Consent. All the investigations, treatments, experiments and operations can be done only with the explicit consent of the patient or somebody authorised to do so.

3. Right to Information. No information should be withheld from the patient unless that can adversely affect his health. He can ask for information on the doctor treating him, seek a second opinion from another doctor, if needed, ask for reports of the diagnostic findings and explanations for bills raised on him.

4. Right to Adequate Prescription Information. Details of the drug use like side effects, risks, cost and availability should be told to the patient. It is understood that only medical of standard quality, efficacy and safety are prescribed.

5. Right to Health Education. The patient can seek advice of the doctor on preventive measures, after care and tips for maintenance of good health.

These rights also put certain responsibilities on the patients. Every patient has to take of preventive methods to keep good health, provide accurate and complete information to the doctor and accept all the consequences of his own informed consent.

CONSUMERS AND MEDICINES

This is a vital area of concern for consumers. During sickness the patients may be taking drugs without really knowing the need, potency, risks and side effects and necessary precautions. Drugs can induce suffering and financial losses if given wrongly. Drugs are indeed essential for treating diseases, but not all drugs available in the market are essential. There are over 70 thousand formulations now in the market many of which are unnecessary, banned, patently hazardous, irrational and over priced. It is estimated that 40% of the available drugs are sub-standard, spurious or outright useless. The drug industry flourishes on the ignorance of the consumers and in some cases with the active connivance of doctors. The consumer's Right to Information, Right to Safety and Right to Life are endangered by deliberate cover up acts and malpractices of interested parties. Consumers should get effective, safe, specific, cheap and easily available drugs. Doctors promote certain medicines as they get favours from the manufacturers. Chemists prefer certain preparations because of larger profit margins.

Consumers should know that they should take medicines only when it is inevitable, strictly on the advice of a qualified doctor. They should obey the instructions regarding dosages, timings, duration and precautions. They should report to the doctor if there are some unexpected reactions. They should never use any medicine after the expiry date. Check the price and contra- indications mentioned on the packets.

Make sure to collect the receipt whenever a purchase is made. This will be needed for filing complaints in consumer courts. Never hesitate to sue the doctor or drug distributor and manufacturer if any hazardous, unsafe product is sold to you. Consumers can also bring action against them if banned drugs are being sold to them or un-substantiated claims about any medicines are advertised or proper informations on them are withheld or restricted trade practices adopted.

Consumers have reasons to be disappointed with the recent pronouncement of the Drug Policy by the Government of India. It is evident that the health needs of the people and consumer interests have been given a go bye. Drug industry has been further liberalized so that it can flourish and make good profits, without bothering

about the production and distribution of essential drugs needed for the masses in sufficient quantities and at affordable prices. Diseases like Malaria, TB, AIDS and even Plague is coming back with a vengeance. The recent Rajasthan Malaria epidemic killing more than 1000 people, proves that in such calamities essential drugs are always in short supply. Market forces do not perhaps work to the advantage of consumers in the case of medicines.

DOCTOR-PATIENT RELATIONSHIP

The relationship between the doctor and patient is still considered sacred in India. But are all the doctors living up to accepted standards especially in the event of the rampant commercialization of medical services? Perhaps not. There is an urgent need for a new perspective, a qualitative change and redefinition of doctors priorities. Patient should not be considered as a commodity for economic gains. Consumer satisfaction should be the central focus in medical services. This is a justifiable demand of the consumers, which the doctors will have to listen to.

Consumer awareness is slowly building up in the country. Concepts are changing, laws are getting updated, established systems are being challenged, consumers are getting more vigilant and demanding. A new pro-consumer culture is slowly emerging. We are all partners in this growing movement and let us be proud of it.

LIST OF CASES

1. A.K. Hazarika Vs. Saraighat X-Ray & Clinical Laboratory.
2. Kadan Karai Nadar & Ors. Vs. Rakkappan.
3. Pavitar Singh & Ors. Vs. State of Punjab and Ors.
4. Sowbhagya Prasad & Ors. Vs. State of Karnataka and Ors.
5. Bhavchandbahai Mangibhai Lakhani Vs. Dr.Bhupendra D.Sagar.
6. Haribhai Lagharbhai Solanki & Ors. Vs. Dr. Suresh Parikh.
7. S. Iqbal Khan Vs. The Child Trust Hospital, Madras.
8. Jagan Nath Vs. Jindal Dental & Orthopaedic Clinic.
9. Dr. C.S. Subramanian Vs. Kumarasamy & Ors.
10. Surendra Kumar Kumawat & Ors. Vs. Dr.(Smt.)Sunil Jain & Ors.
11. Dr. (Sr) Louie & Ors. Vs. Kannotil Pathumma & Anr.
12. Sachin Aggarwal & Vicky Vs. Dr. Ashok Arora.
13. Melwyn Camera Vs. Mr. Bosco D'Souza.
14. Smt. Sukanti Behera Vs. Dr. Sashi Bhusan Rath & Anr.
15. Dr. Jacob George Vs. State of Kerala.
16. R.Gopinathan Vs.Eskeycee Medical Foundation Pvt.Ltd.& Ors.
17. M. Jeeva Vs. R. Lalitha.
18. Vinita Ashok Vs. Lakshmi Hospital & Others.
19. Renu Jain & Ors. Vs. Escorts Heart Institute & Res. Centre.
20. Sir Ganga Ram Hospital Vs. D.P. Bhandari & Ors.
21. M/S.Cosmopolitan Hospitals and anr. Vs. Vasantha P. Nair.
22. Mrs. Marble Roosevelt Vs. State of Kerala.
23. A. Narain Rao Vs. Dr. G. Ramakrishna Reddy and Anr.
24. S.K. Abdul Sukur Vs. State of Orissa & Others.
25. Consumer Unity & Trust Society, Jaipur Vs. State of Rajasthan and Others.

26. Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole and another.
27. Pt. Parmanand Katara Vs. Union of India & Ors.
28. Dr. T.T. Thomas Vs. Smt. Eliza & Ors.
29. Ram Bihari Lal Vs. Dr. J.N. Shrivastava.
30. Dr. Pinnamanein Narasimha Rao Vs. Gundavarapu Jayaprakatu and another.
31. Orissa Nursing Home & Ors. Vs. Smt. Anurekha Sahoo.
32. Brij Mohan Kher Vs. Dr. N.H. Banka and another.
33. B.Shekhar Hegde Vs. Dr. Sudhanshu Bhattacharya & another.
34. Anuradha Sahoo Vs. Orissa Nursing Home & another.
35. A.K. Pias Vs. Carithas Hospital.
36. Miss. Gurpreet Kaur (Minor) Vs. Dr. R.K. Bhutani.
37. R.B. Seth Jessa Ram and Bros. Vs. Sushma.
38. Smt. Ram Kali & Ors. Vs. Delhi Administration and Ors.
39. Haresh Kumar Vs. Sunil Blood Bank and others.
40. Vaghri Gopalbhai Mashabhai Vs. Parmar Navalben Balabhai and another.
41. Delay in providing Lab. Test Results.
42. Child's death due to Doctor's negligence.
43. Treatment for Rabies and alleged negligence.
44. Medical negligence in accident case.

1. X-RAY & CLINICAL LABORATORY — NEGLIGENCE OF RADIOLOGIST

The complainant, a Cancer patient was examined by an ENT Specialist at Assam to whom he had gone and was asked to get a Sonography done. The Radiologist in the X-Ray Clinic reported - "U/Sec Examination shows evidence of a low echoic mass measuring around 23 × 4 mm in size anterior to the IVC could be an enlarged node. Rest of the organs imaged appear within normal limits." The report worried the patient and he went to Cancer Institute at Madras where the Radiologist gave a contrary report that no abnormality was detected. The patient claimed a compensation of Rs. 1,20,000/- against the first Radiologist for negligence. During evidence before the State Commission, the patient stated that he did not show or consult any Specialist at Guwahati before going to Madras. The evidence also showed that he was a cancer patient and had visited Apollo Hospital 5/6 times earlier. In view of the conduct of the patient in rushing to Madras Hospital it was held that he was not entitled to any compensation as the case was dismissed.

(A.K. Hazarika Vs. Saraighat X-Ray & Clinical Laboratory - C.P.No. 122/92 dated 09.10.93 - Assam State C.D.R. Commission).

2. HOMEOPATHY DOCTORS — Negligence

The complaintant's son was run over by a truck and was taken to the Hospital of the opposite parties who were Homeopathic doctors. The allegation is that the boy was not treated properly which caused the disability of the boy. The complaint filed did not State anywhere that any consideration was paid or promised to be paid to the doctors for treating the complainant's boy. Though he stated in evidence that Rs. 1000/- was paid to the doctors, receipt of such amount was denied by the doctors. The question of payment was disbelieved by the Commission. Since under S.2(1)(0) of the C.P. Act, 1986 service does not include rendering of any service free of charge or under a contract of personal service, it was held that the complainant is not a consumer as he did not hire any service for consideration. Accordingly, the complaint was dismissed.

(Kadan Karai Nadar & Others Vs. Rakkappan - A.P.No. 432/93 dated 08.10.93 - Tamil Nadu C.D.R. Commission).

3. DOCTOR IN CIVIL HOSPITAL

The facts of the case are that the wife of the complainant gave birth to two sons and two daughters. On the advice of the opposite party doctor he agreed to get his wife operated upon for tubectomy in the Civil hospital. The doctor did not perform the operation with care and precaution and as a result the operation was not successful. The patient was discharged immediately after the operation though she should have been kept in the

hospital for post-operation care.

She developed post-operation complications and the doctor at the hospital referred her to another Civil Hospital where she died due to those complications. A sum of Rs. 3 Lacs was claimed as compensation. Denying these allegations of neglect the doctor stated that the patient left the hospital on her own and so long as she was there, no complication had set in. Moreover, the treatment given was free of charge and as such the complainant was not a 'Consumer' under the C.P. Act, 1986. The Commission found that the complainant had nowhere stated in the complaint that he had paid any charges to the doctors of the said hospital. It was also held that taxes paid to the Government for running the Civil Hospital being a compulsory extraction did not constitute consideration for services rendered. The Complaint was therefore dismissed.

(Pavitar Singh & Others Vs. State of Punjab and Others O.P.No. 41/93 dated 17.08.93 - Punjab State C.D.R. Commission).

4. FAMILY PLANNING OPERATION CAMP

The complainant sought a compensation of Rs. 10 Lacs from the State Health Department for the defect in the tubectomy operation on the complainant, performed at a family planning operation camp organised by the Department.

As the operation was not successful, she delivered a third female child later on. Thereafter she underwent another operation for total sterilization which resulted in complication of her health. The State Commission found that the complainant had not stated in her complaint that she had hired the services of the opposite party and instead was paid Rs. 70/- by the Health Department after the tubectomy operation. She had not availed of the services for consideration. Relying on the earlier judgement of the National Commission in Consumer Unity & Trust Society, Jaipur Vs. State of Rajasthan wherein it was held that the patient availing facility in a government hospital is not a consumer, the complaint was held to be not maintainable.

(Sowbhagya Prasad & Others Vs. State of Karnataka & Others. O.P.No. 304/92 dated 06.11.93 Karnataka State C.D.R. Commission).

5. OPERATION OF FEMUR PERFORMED AT NURSING HOME

The complainant met with an accident and was admitted to the nursing home of the opposite party. He was advised immediate operation and promised that he would be completely cured within three months. The operation of the neck of femur was performed and the patient was discharged after 10 days with the advice not to make any movement. During his stay in the nursing home he had complained of pain at the place of operation but the doctor there had consoled him that some pain will be there but will be cured. Subse-

quently when X-Ray was taken, the complainant found that the operation had failed because of the negligence of the doctor.

The bone had not been properly fixed and the left leg had shortened by 2.5 inches. The complainant was advised a second operation which was carried out. The complainant claimed costs of the operation and damages. After considering all the evidence, the State Commission came to the finding that the operation had failed because of the negligence of the opposite party doctor. Rejecting the contention of the doctor that services of doctors are not covered by the C.P. Act, 1986 as held by the National Commission, the complainant was awarded compensation of Rs. 29,676 with 12% interest and cost of Rs. 3000/-

(Bhavchandbhai Manjibhai Lakhani Vs. Dr. Bhupendra D. Sagar C.No.378/91 dated 26.08.93 Gujarat State C.D.R. Commission).

6. NEGLIGENCE AGAINST DOCTOR NOT PROVED

The complainant claimed a compensation of Rs. 6 Lacs against the opposite party doctor having caused the death of their son by negligent treatment. The deceased was a school boy who was taken to the dispensary of the opposite party by the rector of the hostel as the boy had fever. He was administered Beralgan injection without verifying as to whether reaction would be caused by the injection. The boy complained of difficulty in vision but no attention was paid to it. He was taken to the Referral Hospital where despite oxygen being given, the boy died. Post mortem was carried out and a Police complaint was filed. The opposite party denied negligence on his part or even his liability in the matter.

The State Commission found that the complainants have not been able to establish from the evidence that death was due to injection or any other treatment given by the opposite party. It was also observed that failure of the heart or respiratory system is attributable to ailment from which the boy was suffering for 2/3 days. It could be a case of natural death. Negligence not having been proved, the question of awarding compensation did not arise.

(Haribhai Lagharbhai Solanki & Others Vs. Dr. Suresh Parikh, C.No. 165/91 dated 21 .07.93 Gujarat State C.D.R. Commission).

7. BLOOD TRANSFUSION — Negligence in

The complainant's 6 months old child was treated twice at the JIPMER Hospital, Pondicherry and was referred to the hospital of the opposite party for better and further treatment. After diagnosis the child was administered blood transfusion against payment. But the complainant later learnt that instead of AB positive blood which the child had, B positive blood was administered without verifying the blood received from the blood bank. The child turned blue and was taken to the intensive care ward. Subsequently the child was administered the correct blood but she had developed renal failure caused by incorrect transfusion of blood

earlier. The child's condition worsened and she was taken to C.M.C. hospital, Vellore but died on the way. The complainant claimed compensation for mental pain, agony and for costs.

The opposite party denied its liability as to negligence and stated that it was an accepted practice that in emergency situations one was justified to give 'B' group blood since persons having AB Blood group are universal recipients. Moreover, the child had thirteen complications when it was brought into the hospital. The State Commission referred to the Manual of Blood Transfusion in Clinical Medicine by Shiraz Kareem where it has been stated at page 98 that in emergency situations, if the recipient is of blood group AB, either group A or group B can be transfused, but both group A and Group B should never be transfused at the same time. Accordingly, it was held that there was no deficiency in service or negligence when the opposite party hospital, having no alternative (AB positive blood group was not available) had to give B positive blood transfusion in order to save the child. Such transfusion also did not have any adverse reaction and her condition did not improve as she was suffering from Haemolytic Uremic Syndrome. The complaint was, therefore, dismissed.

(S. Iqbal Khan Vs. The Child Trust Hospital Madras - O.P.No.209 of 1993 dated 20.10.93 - Tamil Nadu State C.D.R. Commission).

8. ORTHOPAEDIC TREATMENT

The complainant had a fall from a stool in his shop and injured his left fore-arm. He was given orthopaedic treatment at the Clinic of the Opposite Party but the plate inserted in the forearm subsequently got infected. He had then to seek treatment in the orthopaedic Department of the P.G.I. where he could prevent amputation of his arm. He sought damages of ten Lacs rupees and further compensation of Rs. 4 Lacs as his shop had to be closed down and because of the pain and suffering caused by negligence in treatment. The State Commission found that the foundation of the claims were more imaginary than real and the computed loss of Rs. 14 Lacs is at a level to which it cannot reasonably or even possibly be stretched. The main stress was upon the apprehended suffering and injury had the infection led to the amputation of the arm and on the basis of patently remote damages on the ground of loss of business due to closure of shop. Relying on an earlier decision of the Commission (Complaint case 80 of 1993) wherein it was held that mere apprehended hazard or jeopardy to life and limb was not compensatable under section 14 of the Act, the complaint was directed to be returned. It was also held that the complainant's computation of loss and injury alone did not conclusively govern the pecuniary jurisdiction of the redressal agencies under the Act.

(Jagan Nath Vs. Jindal Dental and Orthopaedic Clinic of Kaithan and another - C.C. No. 82 of 1993 dated 09.12.93 Haryana State C.D.R. Commission).

9. WHETHER 'MEDICAL SERVICE' COMES WITHIN THE CONSUMER PROTECTION ACT, 1986 - MADRAS HIGH COURT JUDGEMENT.

Several medical practitioners against whom complaints of negligence and recovery of compensation had been filed in different consumer fora, filed writ petitions in the Madras High Court challenging the applicability of the Consumer Protection Act, 1986 to Medical Practitioners. It was contended that the services rendered by a Medical Practitioner or those rendered in a hospital did not fall within the definition of 'Service' as understood under section 2(1)(0) of the C.P. Act and that a patient who receives treatment from a Medical Practitioner or in a hospital cannot be treated as a 'consumer' within the meaning of section 2(1)(d) of the Act. It was, therefore, contended that Medical Practitioners were outside the purview of the consumer fora set up under the Act. The basis of this objection was that members of the fora were neither qualified nor possessed the calibre to decide complicated and technical issues, no guidelines were there for the selection of these members, and the summary nature of the proceedings and the manner of adjudication based on the majority view of the members was unconstitutional. After hearing arguments both on behalf of the Medical Practitioners and counsels for the respondents the High Court summarized its views as follows:-

a. The services rendered to a patient by a Medical Practitioner or a hospital by way of diagnosis and treatment both medicinal and surgical would not come within the meaning of 'service' as defined in section 2(1)(0) of C.P. Act, 1986.

b. A patient who undergoes treatment under a Medical Practitioner or a hospital by way of diagnosis and treatment both medicinal and surgical cannot be considered to be a 'consumer' within the meaning of section 2(1) (d) of the C.P. Act, 1986.

c. The Medical Practitioners or hospitals undertaking and providing paramedical services of any categories or kind cannot claim similar immunity from the provisions of the Act and they would fall, to the extent of such services rendered by them within the definition of 'service' and a person availing of such service would be a 'consumer' within the meaning of the Act.

d. The services rendered by a medical practitioner or a hospital by way of diagnosis and treatment of medicinal and surgical other than paramedical services, would fall within the exclusionary clause 'contract of personal service' and therefore would be outside the purview of the Act.

e. There is very little difference between the obligations undertaken by a Medical Practitioner in private practice and those imposed on his colleagues and counterparts working in the hospitals run and administered either by the Government or Local Authorities or Philanthropic Bodies. All medical practitioners thus owe a

duty to their patients to exercise reasonable care in carrying out their professional skills of diagnostic advice, treatment or surgery.

(Dr. C.S. Subramanian Vs. Kumarasamy and Others - W.P.No. 14713 of 1991 etc. dated 17.02.94 - Madras High Court).

10. D.N.C. OPERATION

The complainant who had three daughters became pregnant a fourth time but wanted a son and not a daughter. The opposite party doctors were approached for a D.N.C. operation but was told that as she is weak, the operation cannot be done immediately. She was given medicines and treatment for three months. She was advised thereafter to go for Sonography and if a male child is indicated not to go in for D.N.C. operation. The Sonography was carried out and complainant was assured of a male child. After seven months Sonography was again done and she was told that if a girl is born, the doctors would take her and send the infant to a foreign country for 4 or 5 lacs rupees out of which 1.5 lacs rupees would be paid to her. Eventually, a girl was born who died.

The complainant claimed compensation for bodily pain and mental agony and for costs incurred with the doctors. On appreciation of the evidence the State Commission found that there was no deficiency on the part of the doctors. Not carrying out D.N.C. operation by itself did not constitute deficiency of service. It was also held that a mistaken diagnosis was not necessarily a negligent diagnosis. It is also firmly established that a Medical Practitioner should not be found negligent simply because one of the risks inherent in an operation of that kind occurs or because in a matter of opinion he made an error of judgement or because he has failed to warn the patient of every risk involved in a proposed course of treatment. As the opposite party were not negligent there was no question of compensation to the complainant. It was also held that no relief which is not enumerated in section 14(1) of the Act can be granted even if prayed for.

(Surendra Kumar Kumawat & another Vs. Dr. (Smt.) Sunil Jain & Others - C.C No. 53 of 1991 dated 19.08.93 - Rajasthan State C.D.R. Commission).

11. NEGLIGENCE IN THE LABOUR ROOM

The doctor who owned the Josgiri Hospital and Nursing Home had employed a doctor who was not a Gynecologist. But with her consent had put her name board in the hospital with the letters M.D. (Gynae.) to mislead patients into believing that she had a post-graduate degree in Gynaecology.

Three days after the complainant's daughter was admitted, she was removed to the labour room at 3 P.M. and the alleged Gynae informed her relations that she would shortly deliver the baby and herself went to the OPD and started seeing patients. In the meanwhile

the patient in the labour room started screaming. The Anesthesiologist was then managing the labour. The Gynae came to the labour room at 4.20 P.M. After some time she informed the relatives that a male child had been delivered but his condition was serious and that the mother was having severe bleeding. Blood was donated by the husband and some blood was also purchased. But at 9.30 P.M. the relatives were told that the mother of the baby had died as the uterus did not contract and bleeding could not be stopped. An inquiry was made by the complainant and it was revealed that the alleged Gynae was not a post-graduate in Gynaecology as claimed by her and the hospital. The baby was thereupon removed to another hospital where he also died. The complaint was filed against the hospital and the alleged Gynae for mishandling the case and Rs. 5 Lakhs was claimed as compensation. The opposite parties denied their liability and stated that there was no mishandling of the case on their part. The State Commission found that by not using the word 'Freiburg' in W. Germany after the words M.D. (Gyn.) from where she had done her course in Gynaecology, she had violated section 42(1) of the Travancore Cochin Medical Practitioner's Act. Negligence on the part of the opposite party was upheld. The service rendered by the hospital was not free of charge nor there was any element of contract of personal service. The complaint was also held to be competent as the mother who was heir/legal representative could maintain such complaint. Relying on the views of the National Commission in the case of Cosmopolitan Hospitals, it was held that there was no personal service involved in hospitals which provide treatment to patients for payment. Consequently, the compensation awarded by the State Commission was upheld except for what was awarded to bring up the first living child of the husband.

(Dr. Sr. Louie & anr. Vs. Kannolil Pathumma & Anr. - F.A. 97 of 1991 dated 16.11.92 - National C.D.R. Commission, New Delhi).

12. INSERTING STEEL PLATE IN BROKEN FEMUR BONE

The present complaint has been filed by a 13 years old boy through his father alleging negligence on the part of the opposite party orthopaedic surgeon who put a steel plate in his left leg in which the femur bone had got fractured in scooter accident at Hissar. The steel plate was screwed to the bone as an aid to the healing of the fracture. After three months of the said operation, the bone had again broken where a hole had been inserted by the opposite party. This was attributed to the negligence of the opposite party.

When the second fracture recurred, the complainant had to take treatment at Delhi and undergo three major operations.

He was then told that in the earlier operation, a proper hole was not made and the insertion of the steel plate was an act of sheer negligence. The complainant as a growing child of 13 years had been virtually invalidated for the rest of his life and a compensation of Rs. 3 Lacs with interest at 18% has been claimed.

The opposite party contended that the second fracture was occasioned by another fall as borne out from the discharge file at the Delhi hospital and the entire story of a defect in the hole and the plating is a concoction and not based on evidence. In fact, in compression plating, no hole is made in the bone. It was further stated that 'INOR' quality steel was unbreakable, compression plating between 12 and 18 years in fracture not near the growing points was medically advised, and an independent expert orthopaedic surgeon testified that there was no abnormality. Moreover the hospital at Delhi adopted the same methodology as was used by the opposite party. It was therefore, held by the State Commission that dynamic compression plating on the fractured femur of a child of 13 years cannot be deprecated as an inherently negligent procedure in Orthopaedic surgery. The consequence of the subsequent fall was wrongly sought to be laid at the door of the opposite party who has been unreasonably dragged into the vortex of a consumer dispute. It was also pointed out that the ease and inexpensive nature of the consumer jurisdiction should not be allowed to become a vicious weapon in the hands of either the careless or the unscrupulous patients to harass the medical professionals without good and adequate cause. The complainant was directed to pay costs of Rs. 2000/- to the opposite party.

(Sachin Aggarwal @ Vicky Vs. Dr.Ashok Arora - C.C. No. 31 of 1992 dated 29.10.92 - Haryana State C.D.R. Commission, Chandigarh).

13. NON PROVISION OF TOILET AT NEW YEAR DANCE - WHETHER DEFICIENCY IN SERVICE

A complaint was filed against the opposite party who was the organizer for new year dance held in open air in the style of street dance at Panaji, Goa. The complaint was that the opposite party did not provide toilet facility inspite of the whole night dance besides other complaints attributing deficiency in service. The District forum held that non provision of toilet facility had been proved which resulted in inconvenience to the complainant and directed a compensation of Rs. 2000/- with interest at 18%. In the appeal before the State Commission, the respondent quoted section 90 of the Goa, Daman and Diu Public Health Act, 1985 and stated that under this section it was incumbent upon the person or committee appointed by the local authority for organising fairs and festivals to provide for all sanitary arrangements. This was the obligation of the organizer as he had obtained the necessary No-Objection Certificates/Permission for the show and for the bar and ought to have made provision for the toilets or ought to have got it done from the respective local authority who had issued the license. The State Commission agreed that toilet provision should have been made as required by the above section 90 and dismissed the appeal and directed the appellant/opposite party to pay a further Rs. 550/- as costs of the appeal.

(Melwyn Camera Vs. Mr. Bosco D' Souza- Appeal No. 37, of 1992 dated 16.09.92 Goa State C.D.R. Commission, Panaji).

14. WHETHER OBSTRUCTING M.T.P. IS NEGLIGENCE?

The complainant wanted to get her pregnancy medically terminated and approached opposite party No.1 who is a doctor in the Government hospital. The doctor refused to terminate the pregnancy although another doctor in the same hospital advised her to do it. When everything was laid on the table for the operation, the opposite party No. 1, obstructed such service to be rendered. Before the district forum the opposite party stated that the complaint had been motivated by a doctor against whom some malpractice had been reported to the Chief District Medical Officer. The district forum dismissed the complaint as the complainant had not paid for the service to be rendered by the opposite party. Disagreeing with this view, the State Commission held that beneficiary of a service rendered for which the person rendering the service is paid for, is also a consumer as defined in section 2(1) (d) of the C.P. Act, 1986. State Government has paid the doctor to render the service to the people of Orissa who attend the hospital.

The Commission also found that the doctor opposite party had obstructed the M.T.P. of the complainant. Obstruction to the M.T.P. would not be a negligence in rendering service. Merely because one doctor had advised termination of such pregnancy and another doctor was also prepared to operate the complainant, the view taken by the opposite party that there should be no termination cannot be said to be unreasonable. In the absence of better particulars to support the unreasonableness of such view does not amount to negligence for which the complainant has to be compensated. The complainant was without merit and accordingly the appeal was dismissed.

(Smt. Sukanti Behera Vs. Dr. Sashi Bhusan Rath & another C.D. Appeal No. 50 of 1991 dated 15.12.92 - Orissa State C.D.R. Commission, Cuttack)

15. HOMEOPATH USING GADGETS FOR ABORTION NOT TRAINED TO USE.

A practicing Homeopath had performed an abortion operation on the patient using gadgets which he was not trained to use. As a result, the uterus of the patient got perforated and two days later the patient died. On the basis of criminal charges against the doctor, proceedings for conviction were taken. Before the Kerala High Court, the action of the Homeopath was described as daring, crude and criminal. The Homeopath was sentenced to undergo imprisonment and pay a fine of Rs. 5000/- out of which Rs. 4000/- was to be paid to the minor son of the deceased patient as compensation.

Before the Supreme Court of India in appeal, the Homeopath sought to be released on probation and prayed for reduction of sentence of imprisonment to the period already served. Rejecting this prayer, the Supreme Court, raised the quantum of fine to Rs. 1 Lakh to be kept in a nationalized bank so that the child's guardian could utilise the interest accruing thereon for bringing up the child. The deposit was to be paid to the child on his attaining majority

age. The court emphasised that the fine imposing power is a measure of responding appropriately to crime as well as reconciling the victim with the offender.

(Dr. Jacob George Vs. State of Kerala (1994)3 SCC 430)

16. DOCTOR - TWO SURGICAL METHODS

The Tamil Nadu State Commission came to the finding on a perusal of evidence that there was no delay in the performance of the surgery on the injured leg of the complainant, the complainant had himself consented to the surgery, the surgeon who performed the surgery was competent and qualified and the second surgeon who was brought to the witness box did not cast any shadow or doubt on his credentials, that there are two methods of surgery particularly in cases of orthopaedic surgery and the performing surgeon had followed the technique prevalent in the U.K. while the other surgeon followed the technique adopted in America, that the evidence showed that the complainant did not follow the precautions and the other surgeon had nowhere stated that the operation performed suffered from any irreversible or irreparable defect so as to necessitate second operation. On the basis of this finding the State Commission dismissed the complaint. Agreeing, with the above finding the National Commission on appeal dismissed the appeal and held that when there is no evidence to show that the technique adopted by the performing surgeon is not a well-recognised technique it is difficult to hold that the said doctor is guilty of any negligence or deficiency in performing the operation. The Commission quoted the following observation made by Mr. Justice Barrie in Moore Vs. Lewisham Group HNC (1959) as applicable to the present case : "When there are two genuinely responsible schools of thought about the management of a clinical situation the courts could do no great disservice to the community or the advancement of medical science than to place the hall mark of legality upon one form of treatment".

(R. Gopinathan V. Eskeycee Medical Foundation Private Ltd. & Anr - F.A No. 237 of 1992 dated 4th February, 1994 - National C.D.R. Commission).

17. MIDWIFE - NURSE

A complaint was made before the State Commission against the opposite party who was a registered nurse and midwife entitled to practice midwifery under the Tamil Nadu Nurses and Midwives Act, 1926 and was running the Jeevan Hospital rendering prenatal medical services, delivery etc. round the clock.

The complaint was that opposite party rendered deficient medical services at her hospital which caused rupture of the complainant's uterus and delivery of a dead male child. Her uterus had to be removed and she suffered pain and mental agony and could not conceive in future. When the complainant with a 35 week foetus went to the hospital of the opposite party at 11 A.M. on the relevant date, she was taken to the delivery ward at 7 P.M.

and administered some injections. On the next day at 1 A.M. the complainant started heavy bleeding from the uterus. She was at once referred to the City Hospital and was taken there in her car. At the City Hospital an entry was made that the patient referred had a previous caesarean with threatened rupture. At this hospital she was operated upon, uterus removed and a dead child was born. The State Commission, found that the opposite party was not justified in keeping the complainant in her hospital for about 14 hours as she had a pregnancy within one year of the first Caesarean and had a rare blood group. She was held to be responsible for the harm as she acted rashly, recklessly and with culpable negligence. She was directed by the National Commission to pay compensation of Rs. 2 Lakhs and Rs. 10,000/- as costs of the appeal.

(M. Jeeva Vs. R. Lalitha - P.A. No. 322 of 1992 dated 04.05.94 - National C.D.R. Commission, New Delhi).

18. REMOVAL OF UTERUS

The complainant woman who was 26 years old and having a son went to the opposite party doctor (Gynecologist) when she became pregnant again. The doctor advised her to terminate her pregnancy as the earlier delivery was a Caesarean. On the appointed day she went to the hospital of the opposite party where she was taken to the labour room. The relatives were informed that she was bleeding profusely and the operation was carried out. The doctor informed the husband of the complainant that it was a case of cervical pregnancy and her uterus has been removed. Such removal of uterus has been attributed to the rash and negligent act of the doctor. Having been deprived of the uterus at a young age, the complainant claimed a compensation of Rs. 15 Lacs. The opposite party denied any negligence and asserted that diagnosis and treatment had been properly conducted. Because of excessive bleeding Hysterectomy was resorted to for saving the complainant's life. The doctor in her reply justified how the condition of the uterus and examinations compelled the removal of the uterus. After examining the evidence on record and the contentions of the parties, the National Commission came to the finding that it was a case of normal pregnancy at the normal site. It was also the finding that hysterectomy had to be performed upon the complainant and not on account of any negligence in the diagnosis and treatment. In case of emergency the operating doctor has wider discretion about the treatment. After looking at great length into the evidence on the record, the pleadings submitted by the parties and the classic treatises on 'Obstetrics' and 'Gynaecology' 'Pregnancy' etc., the commission came to the conclusion that in the present case the doctors concerned at the hospital acted with due care, circumspection and professional skill and competence and there was no negligence of any kind on the part of any of them. The use of lamineria tent is not proximate cause to the removal of the uterus of the complainant. Accordingly, the petition was dismissed with costs.

(Vinitha Ashok Vs. Lakshmi Hospital and others O.P. No. 11 of 1991 - dated 08.05.91 National C.D.R. Commission, New Delhi).

19. DEATH BY BRAINSTEM HEMORRHAGE.

The husband of the complainant had a By-pass surgery at the hospital of the opposite party where after successful surgery he was discharged. The allegation is that in the wound in the thigh above the knee there was mild redness and inflammation and slight blackening. This was stated to have been caused by infection at the hospital. This resulted in re-admission of the patient in the hospital after 20 days in a state of coma and eventually he died. The complainant claimed compensation of Rs.21.44 lacs and alleged negligence of the hospital. It was alleged that the patient was discharged prematurely, infection came from the hospital, the hospital failed to carry out tests to detect and treat the infection for which he suffered thrombo embolism phenomenon which is a post operative complication. The hospital disclaimed any deficiency in service to the patient and negligence in treatment. There was also no evidence of any infection at the time of discharge necessitating administration of antibiotics. According to the opposite party the patient died of brainstem hemorrhage followed by acute renal failure and cardio pulmonary arrest. The brainstem hemorrhage has no relationship with the coronary by-pass surgery or with the infection of the wound above the knee. The National Commission agreed with this contention after examining expert evidence produced by the hospital. The commission also found that no evidence was there about the infection when the patient was discharged, no autopsy was required as this was not a medico-legal case and cause of death had been determined precisely. There was no omission or negligence on the part of the hospital and as the complaint was fishy in nature, the same was dismissed. The hospital however, agreed to refund ex-gratia the sum of Rs. 20,000/- that was deposited at the time of patient's re-admission in the hospital.

(Renu Jain & Others Vs. Escorts Heart Institute & Research Centre, O.P. No. 84 of 1991 dated 10.04.92, National C.D.R. Commission, New Delhi).

20. HOSPITAL NOT TRANSFERRING PATIENT TO I.C.U.

The complainant alleged failure on the part of the opposite party hospital to provide proper treatment to the patient Rajesh Bhandari, related to the complainant. The failures were - delay of 57 hours in taking a scan of the abdomen, failure to put the patient on respirator, and failure to admit him in the ICU even though the doctors considered this essential. When the patient died, the complainant sought compensation for negligence and deficiency of service on the part of the hospital. The State Commission found negligence of the hospital only for not shifting the patient to ICU or to inform the relatives of the patient that no bed was available in the ICU. The complainant was awarded a compensation of Rs. 1 lac and Rs. 20,000/- as costs. In appeal before the National Commission the hospital

denied its liability to pay compensation as there was no negligence or deficiency on its part. On an appreciation of the evidence and the observations made by the State Commission, The National Commission came to the finding that there was no negligence on the part of the hospital in not having been able to shift the patient to the ICU and all proper care and treatment was given to him. Neither was the hospital's failure to inform the relatives to remove the patient to some other hospital as no bed in the ICU was available was held to be negligence. The appeal was allowed and the orders of the state Commission were set aside.

(Sir Ganga Ram Hospital Vs. D.P. Bhandari & Others F.A. No. 162 of 1991 dated 23.04.92 - National C.D.R. Commission, New Delhi).

21. HOSPITAL'S NEGLIGENCE IN DIAGNOSIS.

The complainant's husband was admitted to the hospital of the opposite party for treatment of persistent back pain. The hospital takes charges for the treatment rendered to patients. The patient was at first diagnosed for TB but based on other symptoms was treated for jaundice. As his condition worsened he was advised to be removed to the Medical College Hospital where he died after some days. Alleging negligence in diagnosis a complaint was filed by the wife and sons of the deceased claiming compensation from the first hospital (opposite party) of about Rs. 5.67 lacs. Preliminary objections were taken about the maintainability of the complaint and it was submitted that the death occurred due to cardiac arrest and not due to negligence of the hospital. The State Commission rejected the preliminary objections and the hospital came in appeal before the National Commission. The Indian Medical Association and the Medical Practitioner's Association were allowed to intervene and were heard in the matter. After considering the issues the National Commission held as follows :

a. The complainants who were legal representatives of the deceased patient were "Consumers" entitled to invoke the jurisdiction of the Redressal Forum under the CP Act, 1986.

b. The activity carried on by the opposite party hospital constitutes "Service" as defined in the said Act,

c. The Services rendered by the hospital do not bring it within the exempted category of service rendered under a "Contract of personal service".

d. When parliament has unambiguously defined the expression "service" in such a broad language giving it the widest amplitude, we see absolutely no warrant for cutting down and restricting the scope of the definition to only service relating to "commercial transactions".

e. A patient does not hire the service of a doctor when he hires the services of the

hospital where the doctors treat him because there is no privity of contract between the patient and the individual doctors.

(M/s. Cosmopolitan Hospitals and another Vs. Vasantha P. Nair, F.A. No. 48 of 1991 and F.A. No. 94 of 1991 dated 21.04.92 National C.D.R. Commission, New Delhi).

22. TREATMENT AT HOSPITAL FREE OF CHARGE

The complainant's husband suffered a cardiac arrest while under anesthesia for undergoing surgery in the Medical College Hospital. He sustained severe cerebral damage on account of lack of blood circulation and as a result he lay in the pay ward of the hospital in a semi-conscious state like a vegetable for one and a half year. The treatment at the hospital was free of charge as the patient had declared at the time of his admission that his income was only Rs. 300/- p.m. As the treatment was found to be free of charge the National Commission held that the claim for compensation in respect of the patient was not maintainable. The ruling given by the commission in the earlier case of consumer unity and Trust Society, Jaipur Vs. State of Rajasthan (F.A. No. 2 of 1989 dated 15.12.98) was followed. However, in view of the unfortunate, condition of the patient, on humanitarian grounds, a suggestion was made to the counsel for the government of Kerala (appearing on behalf of the hospital) to grant a job to either of the two sons or wife of the patient on compassionate grounds.

(Mrs. Marble Roosevelt Vs. State of Kerala - O.P. No. 15, and 16 of 1989 dated 10.07.90 - National C.D.R. Commission, New Delhi).

23. NURSING HOME - TRANSFUSION OF CONTAMINATED BLOOD

The complainant had to undergo surgery of his prostate gland (Trans urethral Resection of prostate gland) at the nursing home of the opposite party doctor. His blood sample was taken for tests and he paid Rs. 200/- towards cost of blood to be obtained for transfusion. He desired that blood be obtained from the Institute of Preventive Medicine. Blood transfusion was given to him during the surgery and when he was discharged he came to know that the nursing home had got the blood from a private blood bank. After four months he started showing prodromal symptoms of 'post-transfusion hepatitis'. Tests revealed that he was suffering from Hepatitis B infection. On the ground that infected blood brought from the private blood bank and by using contaminated equipment and apparatus, the Nursing home had negligently passed on the virus of hepatitis B to him, the complainant claimed a compensation of Rs. 1 lac from the opposite parties each and the costs incurred by him. The opposite parties denied any negligence or deficiency in service and asserted that the operation was done with care and properly. The State Commission had come to the finding that the complainant had failed to prove that the blood transfused was infected with Hepatitis - B. It was also found that he was suffering from jaundice even before the date of the blood transfusion. The National Commission examined the evidence in detail in the context of the

objections taken by the complainant and concluded that the infection was on account of the jaundice. The appeal was dismissed with costs at Rs.5000/-.

(A. Narain Rao Vs. Dr. G. Ramakrishna Reddy and another - F.A. No.25 of 1992 dated 05.03.93 National C.D.R. Commission, New Delhi).

24. NEGLIGENCE IN BLOOD GROUP TESTING

The complainant's wife was admitted to the Gynaecology and Obstetrics Department of the Medical College Hospital. She was advised a blood transfusion. The blood grouping test was performed and a requisition slip alongwith blood sample was given to the patient to bring one bottle of 'O' positive group blood from the blood bank. The blood bank carried out cross matching test between the blood samples and gave one bottle of blood as desired. When this blood was transfused in the patient, she gave abnormal reactions and died. Her body was handed over without a post mortem. The complainant sought compensation of Rs. 7.5 lacs due to negligence in mismatching of blood by the opposite parties. The State Commission took the view that competent forum in this case would be the civil court as oral evidence and cross-examination would be necessary. In appeal, the National Commission held that the State Commission was in error in declining to adjudicate upon the merits of the complaint and remanded the case to it for fresh disposal in accordance with law. It was observed that the very purpose of C.P. Act, 1986 was to provide a cheap and speedy remedy to aggrieved consumers by way of an alternative to the time consuming and expensive process of civil litigation. Sections 13 (4) and 18 of the Act give the Redressal Forums power to summon witnesses and enforce production of documents similar to the powers of a Civil Court. The mere fact that witnesses may have to be examined and their cross examination is necessary is not by itself a valid ground for refusing adjudication of the dispute before the Redressal Forums constituted by the Act. It would amount to unjust denial of the benefits of the Act to the aggrieved consumer.

(S.K. Abdul Sukur Vs. State of Orissa & Others - F.A. No. 96 of 1990 - dated 05.04.91 - National C.D.R. Commission, New Delhi).

25. TUBECTOMY OPERATION AT GOVERNMENT HOSPITAL

The complainant, a registered consumer association filed the complaint on behalf of a woman who underwent abdominal tubectomy operation at the Government hospital at Kota in Rajasthan as part of the family planning programme. After the operation she developed serious complications which reduced her condition to that of an invalid. Negligence was attributed to the civil Surgeon, Kota who performed the operation and also due to lack of proper post operative care and attention. A compensation of Rs. 9.31 lacs was claimed for the loss and injury suffered by the patient. Preliminary objections were taken by the opposite party on the maintainability of the complaint. The State Commission upheld the

objections and thereafter the matter came in appeal before the Nation Commission.

After hearing the contentions made, the Commission laid down the following law:-

a. A person getting medical treatment in a Govt. hospital is not a 'consumer ' within the meaning of section 2(1) d(ii) of the C.P. Act, 1986;

b. Facility of medical treatment in a government hospital cannot be regarded as 'service' hired for 'consideration' and the payment of direct or indirect taxes by the public does not constitute 'consideration' paid for hiring the services in the Government hospitals;

c. Compliant against government doctor for negligence while performing operation for sterilization and post operation care in government hospital is not maintainable as patient or relative is not a 'consumer'.

d. No compensation can be awarded under the C .P . Act, 1986 and the proper recourse is to file a civil suit.

e. "Fees" charged at hospitals are an amount voluntarily paid for a privilege while payment of `taxes' is obligatory and is a levy made by the State to raise funds for support of and for general purposes of Government and cannot be regarded as payment for any particular or special service. (A dissenting view was expressed by Mr. Y. Krishan, Member of the Commission that `fee' is for a special purpose and is quid pro quo (something for something) for that purpose and can be deemed to be `consideration' for special service or benefit rendered. `Tax' is for general and public purpose without reference to special benefit to the tax payer).

(Consumer Unity and Trust Society, Jaipur Vs. State of Rajasthan & Others F.A. No. 2 of 1989 dated 15.12.89, National C.D.R. Commission, New Delhi).

26. DUTIES OF DOCTOR TOWARDS PATIENT GENERALLY

In a case where a femur bone was fractured in an accident, the doctor attempted reduction of the fracture without taking the elementary caution of giving anesthesia to the patient. The patient died due to shock resulting from reduction of fracture by use of heavy traction and excessive force without administering anesthesia. The doctor was sued for damages under the Fatal Accidents Act, 1855 for negligence which was confirmed by the High Court. The Supreme Court in appeal agreed with the findings of the High Court and laid down the duties owed by doctors towards his patient in the following words.

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of

skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz. a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of the treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise 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".

The doctor no doubt has a discretion in choosing treatment which he proposes to give to the patient and such discretion is relatively ampler in cases of emergency.

(Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole and another C.A. No. 547/65 dated 2.5.68).

27. DOCTOR ATTENDING TO PERSON INJURED IN ACCIDENT

A public interest petition was filed before the Supreme Court in which the question was raised whether an injured person brought for medical treatment should be given instantaneous medical aid and only thereafter the procedural criminal law should be allowed to operate. The Supreme Court stated that there is no legal impediment for a doctor to attend to such cases immediately. The effort to save a person's life should have top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation. Life once lost, the status quo ante cannot be restored. Every doctor whether at the Government hospital in or otherwise is duty bound to extend medical assistance with due expertise for preserving life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise (Zonal Regulation and Classifications) which would interfere with the discharge of this obligation cannot be sustained, and must, therefore give way. Lawyers are also to see that doctors are not called unnecessarily to give evidence and they are freed from needless harassment.

(Pt. Parmanand Katara Vs. Union of India & Ors. Cr. w.p. No. 270/88 dated 28.8.89).

28. DOCTOR NOT PERFORMING EMERGENCY OPERATION

A patient with complaints of severe abdominal pain was admitted to the hospital where the doctor diagnosed the case as of acute appendicitis. Emergency operation was not however performed and the patient died the next day as his condition deteriorated fast. The lower court granted a decree of Rs.37,700/= as damages to the relatives of the deceased as the negligence of the doctor was proved. Before the High Court the doctor took the plea that he did not perform the operation as the patient did not give consent to it. Infact, consent is a

defense available under section 88 of the I.P.C. But in such cases, it is the burden of the doctor to prove that the surgery was not performed or a treatment was not administered due to the refusal of the patient to give consent thereto. This is especially so in a case where the patient is not alive to give evidence. Consent is normally implicit in the case of a patient, who submits to the doctor and the absence of consent must be made out by the person alleging it. A surgeon in an emergency case has to prove that consent was refused by the patient not only at the initial stage but even after he was informed about the dangerous consequences of not undergoing the operation.

(Dr.T.T. Thomas vs. Smt Eliza & ors A.S.No.330/80 Dtd 11.8.86)

29. REMOVAL OF GALL BLADDER BY MISTAKE.

Damages were granted in a suit against a Civil Surgeon for rash and negligent act of operating the patient. In this case the appendix of the patient was being removed. The patient had a history of abdominal pain which was ignored, the hospital had no basic facilities like oxygen, blood-transfusion, etc. no urine test or other investigations had been carried out, and with consent of patient's husband incision was done under chloroform but when appendix was found to be normal the gall bladder was removed without husband's consent. The patient died due to toxic effects of chloroform and renal failure.

(Ram Bihari Lal Vs. Dr. J.N. Shrivastava, L.P.A. No.12/80 dated 14.12.84).

30. STANDARD OF PROFICIENCY OF DOCTORS

In this case the Anesthetist after administering anesthesia exposed the patient for about three minutes to room temperature and failed to administer fresh breaths of oxygen before removing endo-tracheal tube and there was delay on his part in inserting the tube again when respiratory arrest occurred. The Surgeon who was present in the operation theatre did not bother to ascertain from the Anesthetist the state of the patient and instead commenced the operation and completed the same which resulted in the patient becoming victim of Cerebral Anoxia rendering the patient of 17 years dependent on his parents. Damages in torts was allowed both against the Anesthetist and the Surgeon for negligence. The High Court stated that negligence constitutes an independent basis of tort liability. Law imposes a duty on everyone to conform to a certain standard of conduct for the protection of others. In the case of persons who undertake work requiring special skill must not only exercise reasonable care but measure upto the standard of proficiency that can be expected from persons of such profession. Failure to conform to the required standard of care resulting in material injury is actionable negligence if there is proximate connection between the defendant's conduct and the resultant injury. A surgeon or Anesthetist will be judged by the standard of an average practitioner of class to which he belongs or holds himself out to belong. In the case of specialists a higher degree of skill is called.

(Dr. Pinnamanein Narasimha Rao Vs. Gundavarapu Jayaprakatu and another. A.NO.651 and 710/79 dated 1.2.89)

31. INDUCING LABOUR PAINS

At the nursing home, the complainant who experienced pains resembling labour pains one month before her expected date of delivery was injected Syntocinon in order to induce labour. Attempts were made to pull out the child surgically but this failed and the child was pushed back into the uterus. When she was shifted to the SCB Medical College & Hospital, the uterus was found to be ruptured and the head of foetus was perforated. She was operated upon and the dead child was brought out. She lost her uterus and the ability to bear children. The State Commission allowed her compensation of Rs. One lac. The National Commission before whom cross appeals were filed both by the complainant and the nursing home found that the State Commission's findings were full of infirmity. No finding on the facts of the case had been recorded which would have established deficiency in service of opposite parties, the out-of-court settlement had been taken into account by the State Commission and conflicting observations about payment made for services at the nursing home were made. On the question of the deficiency of the nursing home the conclusions of the State Commission were conjectural and accordingly, the orders of the State Commission were set aside and the complainant was allowed to prosecute her claim before the Civil Court.

(Orissa Nursing Home & Others Vs. Smt. Anurekha Sahoo - F.A. No. 312 and 451 of 1992 dated 04.08.94).

32. MEDICAL NEGLIGENCE DISPROVED

By a 44 page judgement and order the National Commission has laid down that the Consumer Fora should not be used by patients to claim high compensation against medical doctors on the alleged ground of negligence based on falsities even if affidavits are furnished to support them. The complainant in this case claimed Rs. 55.9 lacs against the opposite party doctors who had treated him on the ground that if the ECG taken at the Bombay Hospital where he was examined had been correctly read by the doctors, he should have been immediately transferred to the Intensive Cardiac Care Unit. As this was not done, he alleged that he suffered damage of the heart muscles. The commission made a very detailed examination of all the affidavits furnished in support of the complainant's case but found his case in all particulars to be false as proved from surrounding circumstances and other documents. Relying on the decision of the Supreme Court in Morgan Stanley Mutual Fund Vs. Kartik Dass & Others (1994 CPJ 7 (II) SC) the Commission found that the present case was a typical instance of indulgence in speculative litigation and adventurism by the complainant, a tendency which must be put down with a heavy hand. The complaint was

accordingly dismissed and the complainant was directed to pay a sum of Rs. 10,000 by way of costs to each of the two opposite parties. Hon'ble Member Shri. Y. Krishnan has pleaded for enhancement of the outer limit of the costs presently impossible under section 26 of the Consumer Protection Act, 1986 on the complainant for false and vexatious complaints.

(Brij Mohan Kher Vs. Dr. N.H. Banka and another - O.P.No.100 of 1993 dated 09.09.94).

33. DEFICIENCY IN POST OPERATIVE CARE

The complainant was admitted as an indoor patient with chest pain in the opposite party hospital and was operated for coronary artery by-pass graft surgery. He paid operation charges as also charges of Rs. 40,000/- for post-operative care which he alleges was deficient in service as he was required to undergo another operation of the rib from the chest region in which a part of infected rib was removed. The State Commission came to the conclusion that there was gross negligence on the part of the doctor in the post-operative care. Also, the fees for operation of a medical practitioner should normally be inclusive of fees of post operative care. The medical practitioner is under ethical and moral obligation to take care of a patient after he has been operated upon. No separate fees, under the heading 'post operative care' can be imagined. It is not the normal practice. Holding that the doctor exhibited indifferent and uncalled for attitude towards the complainant the complainant was awarded a compensation of Rs. 2 Lacs against the doctor in view of the hurts, financial loss and mental distress caused to him by the doctor. It was also held that a patient who hires services of a doctor for a consideration is a 'Consumer' and service rendered by a private medical practitioner also falls within the meaning of 'service' under the C.P. Act, 1986.

(B. Shekhar Hegde vs. Dr. Sudhanshu Bhattacharya & Another - C.C. No. 140/91 dated 26.05.92 Maharashtra C.D.R. Commission).

34. TREATMENT AT NURSING HOME

The complainant alleged deficiency of service on the part of the opposite party nursing home where she had gone for treatment. She had to be shifted to the S.C.B. Medical College Hospital but before the State Commission the nursing home was unable to explain the circumstances under which the patient had to be shifted to another hospital. It was also not explained as to what sufferings were found on the patient upon examination which required sophisticated treatment at a medical college hospital. The commission held that continuing such patient in the nursing home was a deficiency in service. The complainant was awarded compensation of Rs. 1 lac.

(Anuradha Sahoo Vs. Orissa Nursing Home & another - CC Case No. 47 of 1990 dated 6.7.92 -Orissa State CDR Commission).

35. FATAL SNAKE BITE.

The complainant sought a compensation of Rs. 10 lacs from the opposite party hospital on the alleged ground that his brother who was bitten by a snake (Cobra) was not properly treated and due to negligence of the doctors he died. Even though the State Commission gave sufficient opportunities to the complainant to prove the negligence of the doctors, he filed a statement that despite his best efforts he was not able to procure the assistance of any competent doctor to give evidence, that the doctors whom he contacted were reluctant to give evidence against their brother doctors and a medical institution. The Commission came to the finding that there was nothing on the record to show that the doctors who attended on the patient were indifferent or negligent in treatment or that he died on account of their professional negligence. Accordingly, the complaint was dismissed.

(A.K. Pias Vs. Carithas Hospital, C.C.No. 44 of 1990 dated 23.1.91 - Kerala State C.D.R. Commission).

36. DAMAGE DUE TO EYE OPERATION.

The complainant, a minor girl, was taken by her mother for treatment to the ENT Clinic of the Opposite party for treatment of eye disease. The eye was operated upon which resulted in permanent damage to the left eye of the patient. The Commission found that no evidence had been placed before it to support the allegation that no tests had been carried out and that proper examination was not done before the operation was conducted. Infact, there was evidence placed by the opposite party that blood and urine tests had been carried out. No evidence was also brought forward in support of the allegation that improper and dangerous medicines had been used. She was regularly attended to even after her discharge. From the previous medical records it was also seen that the girl was operated on her left eye at A.I.I.M.S. which showed that the girl was carrying the problem from her birth. Finding no fault of negligence with the operating doctor who had taken all precaution in accordance with medical ethics, the State Commission rejected the complaint.

(Miss. Gurpreet Kaur (Minor) Vs. Dr. R.K. Bhutani - Case No. C-135/90 dated 6.3.92 - Delhi State C.D.R Commission).

37. TUBECTOMY OPERATION.

The complainant was registered for tubectomy operation under Family Welfare Scheme of the Government of India and alleged in her complaint that she was entitled to free services from the hospital. The hospital had charged Rs. 1020 for the sterilization operation that is, operation fee Rs. 600/-, Operation Theatre Charges Rs. 180/-, Anesthesia fee Rs. 180/- and Operation and Theatre drugs Rs. 60/-. As the complainant was operated under Family Welfare Scheme of the Government, she asked for a refund and the District Forum ordered a

refund of Rs. 2380/- which was the entire expenditure incurred on delivery and on sterilization. As the government had given her an incentive of Rs. 145/- for the sterilization, the State Commission held that she was entitled to the refund of Rs. 1020 and modified the order of the District Forum to that extent.

(R.B. Seth Jessa Ram & Eros. Vs. Sushma - Appeal No. A-2/90 dated 5.4.90 - Delhi State Commission.)

38. STERILIZATION FROM ESI HOSPITAL.

Almost three years after her husband was operated upon for sterilization at the ESI hospital, the complainant - wife was found to have become pregnant. On verification through medical examination it was found that the sterilization operation had not been successful. A complaint was consequently filed for recovery of Rs.5 lacs as compensation. Before the State Commission the opposite party resisted the complaint as being not maintainable as the operation was done at the ESI hospital free of cost and incentive money was provided to those who took benefit of the service from the hospital. The ESI hospital is run by the Employees State Insurance Corporation constituted under the ESI Act. Normally such hospitals are meant for industrial workers. However, the Govt. of India in view of enormous growth of population realised that its control was necessary in order to improve economic conditions of the masses. Therefore, various hospitals were designated to perform family planning activities as per all India Post Partum Programmes of Hospitals. Relying on the decision of the National Commission in Consumer Unity and Trust Society, Jaipur V. State of Rajasthan and others (F.S. No. 2/89 dated 15.12.89) it was held that a person who availed himself of the facility of medical treatment in the Government hospital was not a consumer and the facility offered in the Government hospital could not be regarded as service hired for consideration. Hence no complaint under the C.P. Act, 1986 could be preferred either by any such person or by a consumer association on his behalf.

(Smt. Ram Kali & Others Vs. Delhi Administration and Others. Case No. C-3/90 dated 25.02.91 - Delhi State C.D.R. Commission).

39. CONTAMINATED BLOOD FROM BLOOD BANK

The unit of blood which the complainant bought from the blood bank for his wife contained the virus of Hepatitis B. As a result, his wife suffered from viral Hepatitis B which was later communicated by her to her husband and the couple suffered for a few months due to defective and contaminated blood supplied by the opposite party blood bank. The opposite party failed to observe the fundamental requirement of ensuring that the blood supplied to the complainant was free from any contamination. The doctor attending to his wife had initially suggested that blood be donated by the relations and merely because she suggested the name of the opposite party blood bank that did not make her responsible for the con-

tamination in the blood. There is no procedure for testing the blood at the time of transfusion before the operation. The commission found the opposite party blood bank to have supplied blood to the complainant that was contaminated and as such awarded a compensation of Rs.20000/- as damages to the complainant.

(Haresh Kumar Vs. Sunil Blood Bank and others - Case No. C-91/90 dated 27.03.91 - Delhi State C.D.R. Commission).

40. TWIN CHILD DELIVERY

The wife of the complainant delivered one child before the village 'dais' but on finding that there was another child in the womb which was not delivered for a long time she was taken on Camel Cart to the Primary Health Centre. The doctor at this centre treated her but because of complications advised her to be taken to the Maternity hospital where she was admitted but as she had to be taken to another hospital where blood was available she died in the Jeep in which she was being carried. The complaint was filed as the doctors were alleged to be negligent even though they had charged their fees. The State Commission found that the allegation of negligence against the doctors had not been proved. There was no other patient in the hospital and the doctor attended to the patient and administered three bottles of dextrose to induce delivery. No qualified person was examined by the complainant to support her case. As no negligence had been proved, the complaint was dismissed.

(Vaghri Gopalbhai Mashabhai Vs. Parmar Navalben Balabhai and another - Complaint No. 22 of 1992 - dated 12.11.92 Gujarat State C.D.R. Commission).

41. DELAY IN PROVIDING LABORATORY TEST RESULTS

A complaint was filed in the Kerala State Consumer Disputes Redressal Commission against the Regional Cancer Centre (RCC) Thiruvananthapuram, Kerala by the family members of prof., N.V Sulaikha of PSMO College, Tirurangadi who died on June 8, 1991. The complainants contented that the inordinate delay of 74 days in providing the result of the Carnico Embryonic Antigens (CEA) estimation test by the RCC had deprived the victim of prompt and proper treatment leading to her death.

The Commission accepted that there was deficiency in service in conducting the test and giving the result. However, it said that it was unable to hold that the death was due to the failure to give prompt treatment. "No doubt, prompt treatment could have been started, and that could have arrested the sudden deterioration and prolonged the end, even if the fatal consequences could not have been averted". Rejecting RCC's contention that the CEA test had no relevance to the treatment of breast cancer and therefore non-supply of the result was inconsequential, the Commission affirmed that there was deficiency in service and awarded

a compensation of Rs 3000 and a cost of Rs 1000 to the family of the diseased woman professor.

(Rajasthan Patrika, Jaipur dated 16 September, 1994).

42. CHILD'S DEATH DUE TO DOCTOR'S NEGLIGENCE

The father who lost his only son aged 13 years filed a case recently in the Maharashtra State Consumer Disputes Redressal Commission. The child was first examined by a neurologist in December, 1991 and was put on "Zeptoin" tablets. The child had a history of four attacks of convulsions and was already taking "Gardinal" tablets. On developing severe rashes all over his body, the neurologist changed the tablet to "Eptoin". But the convulsions increased and on January 4th, the child was critical. The neurologist refused to visit the patient being a weekend, but on his advise the father got his son admitted in Shushrusha Hospital. A junior doctor gave the child four injections of a substance that might have been `largactyl' within a space of about 10 minutes. The neurologist arrived at 4.30 p.m. on 6th January and ordered yet another injection. The child became unconscious. By 7th morning the patient had developed bed sores and his breathing was heavy and laboured. Despite being put on oxygen and having shifted to operation theatre, the child died in the evening of 8th. Jan., 1992.

The Commission found the neurologist, Dr. Nathan negligent as he failed to diagnose the problem properly and misdirected the entire investigation and treatment. He did not take reasonable care expected of a medical practitioner of ordinary prudence. The independent expert criticized that the child died due to complications, resulting from serious negligence and mismanagement of the case by the doctors and staff at Shushurusha Citizen's Cooperative Hospital, Dadar, Bombay. Based on this opinion the Commission held the hospital responsible for the child's death and awarded a compensation of Rs 3.55 lakhs to the father (including Rs 55 thousand from Dr. Nathen).

(Indian Express, New Delhi, 23.11.1994)

43. TREATMENT FOR RABIES AND ALLEGED NEGLIGENCE

The son of the complainant was bitten by a cat and he was taken to the hospital for treatment. The doctor gave first aid and advised a course of A.R Vaccinations. But due to the reaction of this treatment, the patient died which in medical parlance is called the Neuroparalytic Reaction following Nerve Tissue Vaccine (ARV), a well known complication.

The Orissa State Commission held that "we feel that this instant case is an unfortunate incidence for which none can be blamed or held responsible. As a matter of fact, the doctors would have erred had they not given the prophylactic treatment. So we are of the view that rabies being a health problem of considerable magnitude in India with an estimated mortality of more than 25 thousand people per year and that A.R.V being the only prophylaxis

against the it and as there is no treatment once it develops, doctors did not take the case lightly. Unfortunately, this type of nerve tissue vaccination carries risks of complications with 20-25% mortality. Under these circumstances, we dismiss the complaint".

(Smt. Dipli De Sarkar Vs. Steel Authority of India Ltd, Rourkela Steel Plant & Ors. 1992 CPR 559).

44. MEDICAL NEGLIGENCE IN ACCIDENT CASE

The complainant who is an advocate himself, filed a complaint before the Tamil Nadu State Commission for the medical negligence and deficiency of service. The advocate met with a motor accident and the right ankle was injured. We was immediately admitted to the respondent's hospital and the duty doctor attended on him. The patient requested for the services of an Orthopedist, but only an Anesthetist attended on him. The patient's wife, herself an advocate came for information. On the next day, even without informing her, the patient was taken to the operation theatre, put under anesthesia and operated upon. Subsequently the patient had to be transferred to another hospital and an Orthopaedist had to conduct a second surgery on him.

The crux of the matter was whether in that condition of the patient, as per the record of the Orthopaedic Surgeon, viz evidence of Synovitis, non-union of the medical Mallegnus, the irregularity of the particular surface of tibia, chondral sclerosis, the erosion and the irregular nature of the articular surface of the talus can be attributed to the operation conducted by the first doctor. After due consideration of all the facts, the Commission concluded that it was unable to hold first doctor responsible for the condition. The case was dismissed without costs.

(R. Gopinath Vs. Eskeycee, Medical Foundation & Other, 1993, CPJ 338)

Voluntary Health Association of India (VHAI) is a non-profit registered society formed by the federation of Voluntary Association at the level of States and Union Territories. VHAI links over 3000 grassroots-level organisations and community health programmes spread across the country.

VHAI's primary objectives are to promote community health, social justice and human rights related to the provision and distribution of health services in India.

VHAI fulfils these objectives through campaign, policy research and press and parliament advocacy; through need-based training and information and documentation services; and through production and distribution of innovative health education materials and packages, in the form of print and audiovisuals, for a wide spectrum of users - both urban and rural.

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