

**Medical Negligence and Practice of
Medicine in India: Implications of the
“Anuradha Saha” Judgment**

**Supreme Court Judgment by
Hon’ble Justice Mr. S.B. Sinha
& Hon’ble Justice Mr. D. Verma**

Judgment delivered on August 7, 2009

(p.112) *“Failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence”*

SIGNIFICANCE: After making a wrong diagnosis, a doctor prescribes medicines causing harm to the patient would amount to medical negligence

(p.116) “No doctor has the right to use the drug beyond the maximum recommended dose”

SIGNIFICANCE: A doctor is negligent when he/she uses overdose of a drug going beyond the maximum recommended dose

Contributory Negligence

(p.99) “In our opinion, if hospitals knowingly fail to provide some amenities that are fundamental for the patients, it would certainly amount to medical malpractice”

SIGNIFICANCE: Hospitals will be held guilty for malpractice if they fail to provide essential amenities like “oxygen” to the patients

(p.67) *“All the authors are one in stating that their opinion is subject to the instructions given in the package insert of the medicine”*

(p.69) *“The necessity of following the instructions given in the packet insert cannot be underestimated”*

SIGNIFICANCE: Instructions on the “package insert” of a drug must be followed by the doctors –directions given anywhere else, even in the textbooks cannot supersede instructions written on the “package insert”

(p.106) “The law on medical negligence also has to keep up with the advances in the medical science as to treatment as also diagnostics”

SIGNIFICANCE: Doctors must keep up with the advancement of medical sciences and new diagnostics failing which would amount to medical negligence

(p.110) “The standard of duty to care in medical services may also be inferred after factoring in the position and stature of the doctors concerned as also the hospital”

SIGNIFICANCE: Higher level of medical care and service is a legitimate expectation from more reputed doctors and expensive private hospitals

(p.110) “Even in the matter of determining the deficiency in medical service, it is now well-settled that if representation is made by a doctor that he is a specialist and ultimately it turns out that he is not, deficiency in medical services would be presumed”

SIGNIFICANCE: A doctor is guilty for medical negligence if he treats a patient as an expert even though he may not be a specialist in that field

(p.44) “A Court is **not bound** by the evidence of the experts which is to a large extent advisory in nature. **The Court must derive its own conclusion** upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes.”

SIGNIFICANCE: Experts’ opinions are not binding on the court in medical negligence cases

(p.115) “It is the duty of the doctors to prevent further spreading of infections. How that is to be done is the doctors concern. Hospitals or nursing homes where a patient is taken for better treatment should not be a place for getting infection”.

SIGNIFICANCE: Hospitals/doctors are responsible for spreading of infection to the patients.

(p.126) *“The hospitals are institutions, people expect better and efficient service, if the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify and not impleading a particular doctor will not absolve the hospital of its responsibilities”.*

SIGNIFICANCE: Doctors, whether permanent employees or just attending a patient, are equally responsible for negligence.

(p.116) “*He (Dr. B. Prasad, AMRI) stood as second fiddle to the treatment and failed to apply his own mind*”

SIGNIFICANCE: A junior doctor cannot get away from his/her share of responsibility only because senior doctors were treating the patient.

(p.119) *“Every housewife makes contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc.”*

SIGNIFICANCE: Doctors/hospitals must pay compensation even for death/injury to a housewife depending on her education, status and husband's income.

Anuradha's Death Was Caused By Medical Negligence: Supreme Court

GUILTY:

AMRI Hospital

Dr. Sukumar Mukherjee, Nightangle NH

Dr. Abani Roychowdhury, Salt Lake

Dr. Baidyanath Halder, Salt Lake

Dr. Balaram Prasad,

(p.82) *“In other words, the question is as to whether the treatment of Anuradha was in accordance with the medical protocol. In our opinion, the answer must be rendered in the negative”.*

SIGNIFICANCE: Doctors must follow medical protocol for treating patients

(p.72) *“AMRI records demonstrate how abysmal the nursing care was”*

SIGNIFICANCE: AMRI is negligent for nursing care of Anuradha and must pay compensation.

(p.88) *“The treatment line, in this case, does not flow from any considered affinity to a particular school of thought, but out of sheer ignorance of basic hazards relating to use of steroids as also lack of judgment”*.

SIGNIFICANCE: Doctors who treated Anuradha were ignorant of the risk of steroid use.

(p.113) *“On 11th May, 1998, the further prescription of Depomedrol without diagnosing the nature of the disease is a **wrongful act on his part**..... instead of prescribing to a quick acting steroid, the prescription of a long acting steroid without foreseeing its implications is **certainly an act of negligence on his** (Dr. Sukumar Mukherjee) **part without exercising any care or caution”***

(p.114) *“After taking over the treatment of the patient and detecting **TEN**, Dr. Halder ought to have necessarily verified the previous prescription that has been given to the patient.....Apart from using the steroids, aggressive supportive therapy that is considered to be rudimentary for **TEN** patients was not provided by Dr. Halder”*

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SIGNIFICANCE: A doctor must verify and be aware about the treatment that a patient has already received before embarking on using new medicines

(p.115) *“After coming to know that the patient is suffering from TEN, Dr. Abani Roy Chowdhury ought to have ensured that supportive therapy had been given. He had treated the patient along with Dr. Halder and failed to provide any supportive therapy or advise for providing IV fluids or other supplements that is a necessity for the patient who was critically ill”*

(p.116) *“He (Dr. Prasad) stood as second fiddle to the treatment and failed to apply his own mind”*

(p.117) *“So far as the judgment of the Commission is concerned, it was clearly wrong in opining that there was no negligence on the part of the hospital or the doctors”*

(p.132) “We, keeping in view the stand taken and conduct of AMRI and Dr. Mukherjee, direct that costs of Rs. 5,00,000/- and Rs. 1,00,000/- would payable by AMRI and Dr. Mukherjee respectively”.

(p.132) “We further direct that if any foreign experts are to be examined it shall be done only through video conferencing and at the cost of respondents”

SC's scathing criticisms of the Calcutta High Court

(p.128) *“We must express our agony in placing on record that the Calcutta High Court in its judgment has made certain observations which apart from being not borne out from the records, are also otherwise highly undesirable”*

SC's scathing criticisms of the Calcutta High Court

(p.130) *“We must also express our great dissatisfaction when the Calcutta High Court stated: "But it is sufficiently clear that a man of the medical field now residing at United States with family after acquiring citizenship of that country has challenged the conduct and integrity of the three Professors..... Take heed of what has happened in the United States. 'Medical malpractice' cases there are very worrying,.....”*

SC's scathing criticisms of the Calcutta High Court

(p.131) *“Further the statement made by the High Court that the transfer certificate was forged by the patient party is absolutely erroneous”.*

SC's scathing criticisms of the Calcutta High Court

(p.131) *“In a case of this nature, Kunal would have expected sympathy and not a spate of irresponsible accusation from the High Court”*

**At Calcutta High Court,
Justice Mr. G.C. Dey
acquitted all three accused
doctors on March 19, 2004
with severe accusations
against Anuradha's husband**

PBT's Upcoming Battles

- **Stop corruption in medical councils (include non-doctor members)**
- **Why Dr. Ketan Desai is the uncontested president of the MCI? (new writ challenging Dr. Desai's election)**
- **Why the criminal case against Monozyme for producing bogus test kits is in slumber since 2007?**
- **Discriminatory new law for criminal charges against victims of medical neglect (new writ to be filed)**

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