



Legal Hurdles In Measuring Degree Of Negligence: Whether Evidence Is A Base Or Evidence Is A Burden

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ABSTRACT

Medical negligence is a punishable offence under several laws. The laws and acts under which suffering party can seek legal remedies are: Consumer Protection Act, Criminal Law, Law of Tort and Contract Act.

In this paper, the following points will be studied and examined:

- Challenges and difficulties faced by the suffering party in giving evidence in order to prove a case of medical negligence.
- Suggestions to overcome the challenges faced by the suffering party.

INTRODUCTION

In India cases of medical negligence are increasing at a rapid rate. Medical negligence occurs when a doctor becomes legally liable as soon as patient suffers with any injury or damage due to the negligent behaviour of doctor during the time span of the treatment of his patient. The suffering patient may seek legal remedy for his loss or damage caused to him due to the doctor's negligent behaviour. When the patient succeeds in proving evidentially that doctor's negligent behaviour was the reason for his loss or damage, legal action is taken against that doctor. In order to get a legal remedy, the patient must be ready to take the burden of proof for filing a suit of medical negligence.

MEDICAL NEGLIGENCE

DEFINITION

A case of medical negligence arises as a result of injury or damage caused to a patient due to the negligent behavior of the doctor during the treatment and fulfillment of his duty tenure towards the patient.

EXAMPLES OF MEDICAL NEGLIGENCE

- Prescribing wrong or improper medication to the patient.
- Improper or incorrect diagnosis
- Errors in surgery (Surgical errors)
- Incorrect interpretation of medical laboratory reports or tests.
- Lack of services or improper follow ups during medical treatments.

A patient suffering with injury or damage caused to him due to medical negligence can claim or is entitled to get legal compensation for injuries or damages of the following nature:

- Physical injury/ damages
- Injury/ damages causing inability to return to same lifestyle as before the treatment
- Psychological injury/ damage
- Financial losses beard during the tenure of the recovery from the injury or damage caused due to medical negligence.

STANDARD OF CARE

In medical field, there is some ground standards set by the Medical Council which is expected to be followed by the practicing doctors while professing their specialization fields. These standards are required to be meet up by medical professionals. This is known as standard of care.

BREACH OF STANDARD CARE

Any kind of violation in delivering standard of care during treatment thus resulting into cause of injury or damage to a patient is known as breach of standard of care.

CAUSATION

Causation is the direct link between medical negligence done by the doctor and injury or damage suffered by the patient. When it is found that the cause of injury or damage to the patient is because of the breach of standard of care, the doctor becomes liable legally for such breach of his duty.

BURDEN OF PROOF/ EVIDENCE

The burden of evidence clearly lies with the patient complaining for a case of medical negligence. Evidence is required by the court of law against the doctor for proving allegations charged on him.

However, there are very few cases where patient can shift burden of proof from his shoulder to the doctor. In these cases the doctor becomes liable to explain in detail entirely the medical procedure opted by him.

These kind of cases comes under Latin maxim “Res Ipsa Loquitur” where injury itself shows and speaks for itself as an evidence that treatment done negligently by doctor is the cause of the injury or damage and that the injured person could not have got the injury voluntarily on his own or in simpler words, the patient himself is not responsible for his own injury.

ELEMENTS FOR PROVING MEDICAL NEGLIGENCE

- Primarily, there must be existence of the relationship of doctor and patient between both the parties.
- There must be existence of duty of standard care towards the patient.
- Breach of such standard duty must be falling on doctor’s part.
- By such breach of standard duty, the patient must have faced any injury or damage to prove a case of medical negligence.

PROCEDURE FOR FILING A SUIT FOR MEDICAL NEGLIGENCE

- The first and primary step for seeking legal remedy in cases of medical negligence is to file a complaint against the doctor.
- Patient or victim can seek legal remedy by filing complaint with the Local Police and the State Medical Council or with the Consumer court, depending on the nature of injury/ damage caused to the patient due to the negligent behavior of the doctor. For seeking monetary compensations, the patient may go to Consumer Courts and it is less time taking in Consumer courts.
- The patient can further present his appeal to the Medical Council of India if the patient finds the judgment of the State Medical Council unsatisfactory and the council then takes relevant action at its discretion.

In cases where the patient is still not satisfied with the decision of the Consumer courts, then in such cases he may further go to National Consumer Dispute Redressal Commission.

EVIDENCES REQUIRED FOR FILING A SUIT OF MEDICAL NEGLIGENCE

In order to file a suit against any doctor, practitioner or hospital, there are certain requirements which are needed to be fulfilled by the patient. Merely accusing the doctor without any evidence will not constitute for a suit. Evidence is required by the courts and by legal authorities for filing a suit of medical negligence. The evidences required are as follows:

- All the medical records- As mentioned in Medical Council guidelines, the patient is required to get all the medical records related to his case within 72 hours from the date and time of appointment.
- In cases of medical negligence it becomes easier if the patient has documents of consent of his treatment with him.
- For seeking redressal under Consumer Protection Act, the patient must have paid full fees of the doctor for the treatment's given by the doctor to the patient as under the Consumer Protection Act, the doctor is a service provider and patient is consumer who avails the service for consideration.

If the patient has not made the full payment for the services rendered by the doctor, patient will not be considered as consumer and he cannot seek redressal under the Consumer Protection Act.

CHALLENGES AND DIFFICULTIES FACED BY VICTIMS IN THE CASES OF MEDICAL NEGLIGENCE

- Legal suit of medical negligence lives or dies by solely on Evidence – In the cases of medical negligence, merely accusing a doctor does not constitute for seeking a legal remedy. To sustain a case of medical negligence there must be evidences. If the patient becomes unable to meet up with the legal requirements of evidences, regardless of the injury or damages suffered by him, the case may be dismissed in court and legal action becomes impossible against the doctor.
- Time taking process - As legal process in India is immensely time taking process, the patient or suffering party might go through mental trauma or might face loss of confidence.
- There are more chances that the doctor wins the case as due the goodwill of the doctor or the hospital in which he is working. Even in some cases, where the doctor's are aware of the fact that they have been negligent and due to their negligence the patient might have undergone through injuries or damage, there are chances of removal of the evidences prior to evidence collection by the patients in such cases by the doctors in

order to safeguard themselves beforehand. This might create a problem for the patient in gathering the evidences for filing a suit of medical negligence.

- Lack of Knowledge in Medical Background –It is the sole responsibility of the patient to gather all evidences and due the lack of knowledge in medical field and proper guidance, it becomes tough to prove the case of medical negligence. Even in some cases, injury comes into the notice to the patient in later stages. Hence it becomes essential to obtain medical opinion from an expert in this field.

CONCLUSIONS AND SUGGESTIONS

To overcome the hurdles and problems faced in measuring the degree of medical negligence, some suggestions are mentioned as below:

- Doctors must be aware with the concepts and rights of the patients - For safeguarding the patients from medical negligence, the doctors must be aware of the rights of the patients so there are least chances that medical negligence occurs.
- Mandatory submission of all medical records with the State Medical Council in softcopy and as well as hardcopy form on monthly basis to remove the chances of evidence removal by the doctors.
- There must be a Consent form in every hospital and clinical establishments to be signed by the patients and their treating doctors for their treatments clearly mentioning all the minute details. This will also safeguard the doctors from false cases of medical negligence.
- There must be improvement in judicial system to fasten up for solving the cases of medical negligence, as in present scenario in India, the judicial process is time taking.