RESEARCH QUESTION

> *"What constitutes medical negligence under Indian law, what is the Bolam test as applied by Indian courts, what remedies exist through consumer forums and criminal law, and what compensation principles have courts laid down?"*

Medical Negligence in India: The Bolam Standard, Civil and Criminal Remedies, and Compensation Principles

TL;DR

Under Indian law, medical negligence constitutes a breach of a professional duty of care resulting in damage, with the standard of care governed by the Bolam test as affirmed by the Supreme Court in *Jacob Mathew v. State of Punjab* (2005). Civil remedies are available under the Consumer Protection Act for "deficiency in service" alongside common law tort actions, whereas criminal liability under Section 304A IPC (now Section 106 BNS) requires proof of "gross" negligence and is protected by mandatory procedural safeguards. Compensation principles require courts to award just and equitable restitution, accounting for direct damages, the economic value of homemakers, and actual physical injuries.

VERIFIED CASES	STATUTES	LATEST RULING
25	3	2024
14 *High Courts* · 11 *SC*		*High Court of Punjab and Haryana*

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I. Detailed Analysis

KEY PRINCIPLES ESTABLISHED

01 Definition and Core Elements of Actionable Negligence

Actionable medical negligence requires proof of three essential ingredients: a duty of care, a breach of that duty, and resulting damage directly caused by the breach, as established in *Jyoti Devi v. Suket Hospital & Ors.* (2024).

02 The Professional Standard of Care (Bolam Test)

A medical professional is not expected to possess the highest expert skill but must exhibit the ordinary skill of an ordinary competent practitioner exercising that particular art, as confirmed in *State of H.P. v. Shyam Singh* (2008).

03 Informed Consent and Risk Disclosure

Under Indian law, a doctor must obtain explicit and informed consent for any therapeutic procedure, and a diagnostic consent cannot be treated as authorization for radical or additional surgery unless there is an imminent life-threatening emergency, as ruled in *Samira Kohli v. Dr. Prabha Manchanda & Anr.* (2008).

04 Logical Reasoning and the Departure from Strict Bolam

While the Bolam test is the general standard, modern jurisprudence recognizes that courts are not bound to escape a doctor from liability if the accepted professional practice lacks a logical basis or fails to weigh risks against benefits, as analyzed in *Arun Kumar Manglik v. Chirayu Health and Medicare Private Ltd.* (2019).

05 Distinction Between Civil and Criminal Negligence

The standard of negligence is significantly higher in criminal law than in civil law, requiring proof of "gross" or culpable negligence and the existence of mens rea to sustain a prosecution, as held in *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Others* (2009).

06

Procedural Protections Against Malicious Criminal Prosecution

To prevent harassment of doctors, criminal courts and police authorities cannot initiate proceedings or arrest a practitioner without obtaining an independent, competent expert medical opinion confirming a prima facie case of gross negligence, as outlined in *Dr. Premlata Bansal v. Manoj* (2016).

HOW THE COURTS HAVE APPLIED THIS

SUPREME COURT POSITION	The Apex Court has consistently held that a doctor cannot be held liable for negligence simply because a treatment was unsuccessful or because of a bona fide error of judgment in choosing between two reasonable courses of treatment, provided they acted with reasonable skill and competence, as illustrated in *Kusum Sharma v. Batra Hospital & Medical Research Centre* (2010).
HIGH COURT VARIATIONS	While the standard guidelines are universally applied, High Courts have increasingly engaged with the shifting international landscape where English courts have discarded the strict Bolam standard in favor of a logical-basis test, as noted in *Max Super Speciality Hospital v. State of Punjab* (2024).
RECENT EVOLUTION	Recent decisions reinforce that liability only attaches when a practitioner's care falls below the standard of a reasonably competent professional, and no negligence can be found merely because a patient's condition deteriorated despite standard protocols being followed, as reaffirmed in *Dr. (Mrs.) Chanda Rani Akhouri & Ors. v. Dr. M.A. Methusethupathi & Ors.* (2022).

UNSETTLED AREAS OR CAVEATS

There remains an active academic and judicial debate regarding the absolute applicability of the Bolam test in India, especially with the introduction of the Bolitho qualification (the "logical basis" test), creating a tension between blind deference to professional practices and the court's role in verifying the rationality of those practices, as discussed in *Vinod Jain v. Santokba Durlabhji Memorial Hospital & Anr.* (2019).

II. Statutory Provisions 3 PROVISIONS

SECTION 337, INDIAN PENAL CODE, 1860 — CAUSING HURT BY ACT ENDANGERING LIFE OR PERSONAL SAFETY OF OTHERS

This section provides punishment for causing hurt to any person through a rash or negligent act that endangers human life or personal safety.

> "Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both." *Cited in*: (not cited in the retrieved case snippets)

SECTION 338, INDIAN PENAL CODE, 1860 — CAUSING GRIEVOUS HURT BY ACT ENDANGERING LIFE OR PERSONAL SAFETY OF OTHERS

This section provides punishment for causing grievous hurt to any person through a rash or negligent act that endangers human life or personal safety.

> "Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both." *Cited in*: (not cited in the retrieved case snippets)

SECTION 106, BHARATIYA NYAYA SANHITA, 2023 — CAUSING DEATH BY NEGLIGENCE

This section prescribes the punishment for causing death by negligence, providing a reduced maximum prison term of two years for registered medical practitioners who cause death while performing a medical procedure.

> "(1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.
>
> Explanation.—For the purposes of this sub-section, "registered medical practitioner" means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 (30 of 2019) and whose name has been entered in the National Medical Register or a State Medical Register under that Act." *Cited in*: (not cited in the retrieved case snippets)

III. Cases Discussed

25 CASES · SUMMARY TABLE

#	CASE TITLE	COURT	YEAR	KEY HOLDING
01	*Martin F. D'Souza v. Mohd. Ishfaq* ESCR010007222009	SUPREME COURT OF INDIA	2009	No liability for treatment failure or side effects if reasonable care is exercised.
02	*State of H.P. v. Shyam Singh* HPHC010036892001	HIGH COURT OF HIMACHAL PRADESH	2008	Evaluates whether paralysis from anti-rabies vaccination arose from standard care or negligence.
03	*Dr. Rajratan v. State of Maharashtra* HCBM040207282013	BOMBAY HIGH COURT	2020	Criminal prosecution requires proof of gross negligence and an independent expert opinion.
04	*Chinta Mani Yadav v. State of U.P.* UPHC011697502023	ALLAHABAD HIGH COURT	2023	Mere medical complications do not equate to professional negligence without gross recklessness.
05	*Jacob Mathew v. State of Punjab* ESCR010003522005	SUPREME COURT OF INDIA	2005	Reaffirmed the Bolam test and established guidelines for criminal prosecution of doctors.
06	*Anita Nagindas Parekh v. Anil C. Pinto* HCBM020001841985	BOMBAY HIGH COURT	2008	Surgeon held liable in tort for failing to provide adequate post-operative care.
07	*Mahendra Prasad Jha v. State of Jharkhand* JHHC010179532007	HIGH COURT OF JHARKHAND	2012	Discharged medical practitioners from criminal charges due to absence of gross negligence.
08	*Max Super Speciality Hospital v. State of Punjab* PHHC010487662015	HIGH COURT OF PUNJAB AND HARYANA	2024	Recognizes that English courts discarded Bolam in favor of logical-basis standard.
09	*Dr. Gurdeep Singh Kochhar v. U.T. Chandigarh* PHHC010324352007	HIGH COURT OF PUNJAB AND HARYANA	2010	Quashed FIR as treatment met standard protocols and lacked criminal gross negligence.
10	*Dr. Pabitra @ Pabitra Kumar Biswas v. The State of West Bengal & Anr.* WBCHCA0541332016	CALCUTTA HIGH COURT	2023	Quashed criminal proceedings where prosecution failed to show high-degree gross negligence.
11	*Arun Kumar Manglik v. Chirayu Health and Medicare Private Ltd.* ESCR010006272019	SUPREME COURT OF INDIA	2019	Home-maker contributions hold significant economic value when determining compensation for negligence.
12	*Naval Singh Jatav v. The State of Madhya Pradesh and Others* MPHC030294652019	HIGH COURT OF MADHYA PRADESH	2020	Disputed medical negligence facts should be resolved in consumer forums, not writ petitions.

#	CASE TITLE	COURT	YEAR	KEY HOLDING
13	*Pramod Yashwantrao Gurjar v. State of Maharashtra* HCBM040059502012	BOMBAY HIGH COURT	2023	Quashed FIR as standard cesarean protocol was followed without proving gross negligence.
14	*Spring Meadows Hospital v. Harjol Ahulwalia* ESCR010001581998	SUPREME COURT OF INDIA	1998	Upheld compensation to parents as beneficiaries under Consumer Protection Act for child's injury.
15	*Jyoti Devi v. Suket Hospital & Ors.* ESCR010002382024	SUPREME COURT OF INDIA	2024	Leaving a surgical needle in abdomen is actionable negligence; restored original compensation.
16	*Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Others* ESCR010001982009	SUPREME COURT OF INDIA	2009	Negligence under criminal law cannot be evaluated collectively, but civil liability remains.
17	*Dr. G.S. Chandraker v. State and Another* DLHC010557502005	HIGH COURT OF DELHI	2007	Affirmed discharge as referring patient due to lack of equipment was not negligent.
18	*Kusum Sharma v. Batra Hospital & Medical Research Centre* ESCR010004772010	SUPREME COURT OF INDIA	2010	Established eleven guiding principles to prevent harassment of doctors in negligence claims.
19	*Vinod Jain v. Santokba Durlabhji Memorial Hospital & Anr.* ESCR010007172019	SUPREME COURT OF INDIA	2019	Hospital not liable when medical decisions align with accepted protocols despite patient death.
20	*Dr. Dilip Amonkar v. State of Goa* HCBM050021422017	BOMBAY HIGH COURT	2017	Framed charges as failure to perform mandatory pre-operative tests showed prima facie negligence.
21	*Dr. Premlata Bansal v. Manoj* MPHC020062282010	HIGH COURT OF MADHYA PRADESH	2016	Quashed criminal charges since death from renal failure occurred six months after surgery.
22	*Achutrao Haribhau Khodwa v. State of Maharashtra* ESCR010003121996	SUPREME COURT OF INDIA	1996	Applies res ipsa loquitur where a surgical mop was left inside patient's abdomen.
23	*Neera Garg v. State of Haryana* PHHC010338502005	HIGH COURT OF PUNJAB AND HARYANA	2007	Quashed summons where magistrate failed to state reasons for disregarding police cancellation report.
24	*Samira Kohli v. Dr. Prabha Manchanda & Anr.* ESCR010008192008	SUPREME COURT OF INDIA	2008	Performing radical surgery without patient's specific consent is a tortious act of battery.

#	CASE TITLE	COURT	YEAR	KEY HOLDING
25	*Dr. (Mrs.) Chanda Rani Akhouri & Ors. v. Dr. M.A. Methusethupathi & Ors.* ESCR010004522022	SUPREME COURT OF INDIA	2022	Doctors not liable for post-operative deterioration if standard medical protocols are followed.

IV. Case Details 25 CASE FILES

01 Martin F. D'Souza v. Mohd. Ishfaq

SUPREME COURT OF INDIA · 2009-02-17 · 2009 INSC 197

The patient, suffering from chronic renal failure and severe infections, sought compensation for hearing impairment allegedly caused by the doctor's prescription of Amikacin. The National Consumer Disputes Redressal Commission initially ruled in favor of the patient. On appeal, the Supreme Court held that the doctor was not negligent, noting that the medication was a necessary, albeit risky, intervention in a life-threatening situation. The court emphasized that the patient continued the medication against express medical advice and failed to cooperate with the treatment plan. The decision reinforces that medical professionals cannot be held liable simply because a treatment fails or causes side effects, provided they exercised reasonable care and complied with accepted medical standards.

HELD The Supreme Court held that medical professionals are not liable for negligence if they act with reasonable care, even if the treatment is ultimately unsuccessful. The basic principle in medical negligence is the Bolam rule, which evaluates the standard against an ordinary skilled doctor rather than an extraordinary expert. Consequently, a doctor exercising standard care cannot be penalized for choosing a risky but necessary course of treatment for a critical patient.

> "MOHD. ISHFAQ 277 duty with reasonable care they will not be held liable even A if their treatment was unsuccessful. However, every doctor should, for his own interest, carefully read the Code of Medical Ethics which is part of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 issued by the Medical Council of India 8 under Section 20A read with Section 3(m) of the Indian Medical Council Act, 1956. [Paras 73 and 74] [308-F-H; 309-A] 4.2. The basic principle relating to the law of medical negligence is the Bolam Rule. The test in fixing negligence C is the standard of the ordinary skilled doctor exercising and professing to have that special skill, but a doctor need not possess the highest expert skill."

SUPREME COURT OF INDIA · 2009 SOURCE ESCR010007222009

02 State of H.P. v. Shyam Singh

HIGH COURT OF HIMACHAL PRADESH · 2008-04-04 · RFA/232/2001

The respondent sued the state government for medical negligence after suffering paralysis following an anti-rabies vaccination at a district hospital. The respondent alleged that the hospital staff failed to provide proper care and failed to inform him of potential side effects, resulting in permanent disability. The trial court decreed the suit in his favor, awarding damages. On appeal, the High Court considered whether the medical treatment provided was negligent or if the condition was a known, rare immunological side effect of the vaccine. The court applied the Bolam test to determine if the medical professionals acted with standard care.

HELD The High Court applied the Bolam test and reiterated that negligence comprises three components: duty, breach, and resulting damage. An error of judgment, accident, or simple lack of care does not amount to professional negligence so long as the doctor follows a practice acceptable to the medical profession of that day. Practitioners are judged by the standard of an ordinary competent professional, not a highly skilled expert.

> "The Court has approved the test as laid down in Bolam v. Friern Hospital Management Committee popularly known as Bolam's test, in its applicability to India. The relevant principles cull ed out from the case of Jacob Mathew read as under: (1) Negligence is the breac h of a duty caused by omission to do somethin g which a reasonable man guided by those considerat ions which ordinarily regulate the conduct of hu man affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P.Singh), referre d to hereinabove, holds ...10... good. Negligence become s actionable on account of injury resulting from the act or omission amounting to negligence a ttributable to the person sued. The essential compon ents of negligence are three: 'duty', 'breach' and 'resulting damage.'"

HIGH COURT OF HIMACHAL PRADESH · 2008 SOURCE HPHC010036892001

03 Dr. Rajratan v. State of Maharashtra

BOMBAY HIGH COURT · 2020-10-28 · APL/524/2013

This case involved a criminal prosecution against a doctor and his driver following the death of a patient during a medical termination of pregnancy procedure. The prosecution alleged that the doctor performed the procedure without proper facilities and while suspended, leading to charges of medical negligence and statutory violations. The applicants sought to quash the FIR, arguing that the initiation of criminal proceedings against a medical professional without an independent expert opinion violated the guidelines set by the Supreme Court in the Jacob Mathew case.\n\nThe High Court quashed the criminal proceedings against the applicants. Relying on the precedent set in Jacob Mathew, the Court held that criminal prosecution against doctors requires proof of gross negligence and independent expert verification, which were absent in this case.

HELD The High Court held that the standard of negligence required to establish a criminal offense under Section 304A IPC must be gross or of a very high degree, which is significantly higher than civil negligence. The prosecution must show that the doctor did or failed to do something that no ordinary prudent doctor would have done. Furthermore, the rule of *res ipsa loquitur* has extremely limited application in criminal trials and cannot determine liability per se.

> “The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices... (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or 11 Apl524 & 509 of 2013 of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.”

BOMBAY HIGH COURT · 2020 SOURCE HCBM040207282013

04 Chinta Mani Yadav v. State of U.P.

ALLAHABAD HIGH COURT · 2023-12-06 · WRIC/26458/2023

The petitioner sought to challenge an inquiry report regarding the death of a newborn baby at a hospital, alleging medical negligence. Previously, the court had directed the authorities to conclude an inquiry into the incident. The resulting inquiry committee, which included medical and administrative officials, concluded that there was no medical negligence. The court dismissed the current petition, noting that the petitioner had previously insisted on the completion of the inquiry and could not now challenge the constitution of the committee that conducted it. Relying on Supreme Court precedents, the court held that mere medical complications do not equate to professional negligence unless gross recklessness is proven.

HELD The High Court confirmed that the test for medical negligence is not that of the hypothetical "man on the Clapham omnibus," but rather the standard of an ordinary skilled person possessing that specific competence. It is incumbent upon the complainant to prove that a doctor fell short of the standard of reasonable medical care by adducing expert evidence. The court noted that *res ipsa loquitur* is not generally followed by consumer or civil courts in India without specific expert proof.

> “Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test i s the standard of the ordinary skilled man exercising and professing to have that special skil l. A man need not possess the highest expert skill..... It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.”

ALLAHABAD HIGH COURT · 2023 SOURCE UPHC011697502023

05 Jacob Mathew v. State of Punjab

SUPREME COURT OF INDIA · 2005-08-05 · 2005 INSC 334

This case concerns the criminal liability of medical professionals under the Indian Penal Code for alleged negligence resulting in death. The court distinguished between civil and criminal negligence, holding that for a

doctor to be criminally liable, their conduct must show 'gross' negligence or recklessness, exceeding mere errors of judgment or lack of ordinary skill. The court reaffirmed the application of the Bolam test to evaluate professional standards in India.\n\nIn this instance, the death occurred due to the non-availability of a functional oxygen cylinder, which the court found did not constitute criminal negligence by the attending doctors. To prevent malicious prosecutions, the court established specific procedural guidelines, requiring credible expert opinion before initiating criminal proceedings against medical practitioners.

HELD The Supreme Court held that so long as a doctor follows a practice acceptable to the medical profession of that day, they cannot be held liable for negligence merely because an alternative treatment course was available. The court ruled that the word "negligence" under Section 304A IPC must be qualified as "gross" negligence. It also laid down strict procedural guidelines, stating that police officers must obtain an independent medical opinion from a government doctor before registering an FIR or arresting an accused doctor.

> “So long as a doctor follows a practice acceptable to the medical profession of . that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.”

SUPREME COURT OF INDIA · 2005 SOURCE ESCR010003522005

06 Anita Nagindas Parekh v. Anil C. Pinto

BOMBAY HIGH COURT · 2008-11-10 · S/510/1985

The plaintiffs sought damages for medical negligence resulting in the death of their relative, Prakash Nagindas Parekh, following a sympathectomy procedure performed by the defendant, a surgeon. The plaintiffs alleged that the surgery was unnecessary and that the defendant was negligent during the procedure and in the subsequent post-operative care. The evidence, including the defendant’s own testimony, revealed that the surgery, which was supposed to be a routine procedure, faced critical complications including arterial spasms and multiple blood clots that were not effectively managed in the defendant’s clinic. The court found that the defendant failed to provide appropriate post-operative care and timely intervention, ultimately holding him liable for negligence and ordering damages to the plaintiffs.

HELD The High Court held that while criminal liability for negligence is ruled out except in the grossest cases, the Bolam test remains the benchmark to evaluate civil liability in tort. The court observed that the law allows medical practitioners to make legitimate mistakes, but failure to properly address critical, known post-operative complications falls outside of acceptable standard practice and constitutes actionable negligence.

> “Consequently the criminal charge of negligence is ruled out except in the grossest cases perfectly proved by the prosecution. Nevertheless, the Bolam test remains to be considered in case of civil liability for the tort of negligence.”

BOMBAY HIGH COURT · 2008 SOURCE HCBM020001841985

07 Mahendra Prasad Jha v. State of Jharkhand

HIGH COURT OF JHARKHAND · 2012-09-07 · CR.REV./313/2007

The petitioners, including three medical practitioners and two assistants, sought to be discharged from criminal proceedings regarding the death of a patient during a gall bladder surgery. The informant alleged medical negligence, leading to charges under Section 304A of the Indian Penal Code. The court examined the post-mortem report, which attributed the death to shock from bacteremia and septicemia rather than surgical error. Relying on Supreme Court precedents regarding medical negligence, the court held that the allegations did not demonstrate the gross negligence required for criminal prosecution. Consequently, the court set aside the lower court's order refusing discharge and discharged the petitioners, noting that civil remedies remain available if applicable.

HELD The High Court discharged the accused doctors, holding that criminal negligence requires a much higher degree of culpability than civil negligence. The prosecution must establish *mens rea* and show that the negligence was gross. Relying on *Kusum Sharma*, the court noted that medical professionals are expected to bring a reasonable degree of skill, but cannot be held liable for an error of judgment or for taking calculated risks to save a patient.

> "The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices... (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law."

HIGH COURT OF JHARKHAND · 2012 SOURCE JHHC010179532007

08 Max Super Speciality Hospital v. State of Punjab

HIGH COURT OF PUNJAB AND HARYANA · 2024-03-11 · CRM-M/3458/2015

This case involved a petition to quash a criminal complaint alleging medical negligence, cheating, and conspiracy against a hospital and a cardiologist. The complainant alleged that the doctors performed unnecessary or improperly managed pacemaker surgeries on her late husband, eventually leading to his death. The petitioners contended that the procedure was performed in two medically necessary stages due to the patient's severe heart condition and that proper informed consent was obtained. The trial court had initially summoning the accused based on the complaint and preliminary evidence. The high court was asked to evaluate whether the allegations established a prima facie case of professional negligence or merely a standard medical procedure carried out on a high-risk patient.

HELD The High Court reviewed the procedural limits of the Bolam test and recognized that modern jurisprudence (notably the House of Lords in *Bolitho*) has nuanced the standard. Under this modernized standard, a court is not bound to find a doctor immune from liability just because they produce expert opinions supporting their practice; the court must be satisfied that the expert medical opinion has a "logical basis" and has properly balanced comparative risks and benefits.

> “In recent years, the Bolam test has been di scarded by the courts in England. In Bolitho v. City and Hackney Health Authority, a five judge bench of the House of Lords ruled that : “... the court is not bound to hold that a defendant doctor escapes liability for negligent treatment or diagnosis just because he leads evidence from a number of medical experts who are g enuinely of opinion that the defendant's treatment or diagnosis accorde d with sound medical practice.”

HIGH COURT OF PUNJAB AND HARYANA · 2024 SOURCE PHHC010487662015

09 Dr. Gurdeep Singh Kochhar v. U.T. Chandigarh

HIGH COURT OF PUNJAB AND HARYANA · 2010-02-03 · CRM-M/44167/2007

The petitioners, two doctors operating a nursing home, sought to quash an FIR alleging criminal medical negligence following the death of a patient and her newborn child during delivery. Multiple expert medical boards, including specialists from government hospitals and medical colleges, investigated the case and consistently concluded that the treatment provided was standard and that there was no evidence of gross medical negligence. Applying the principles set forth by the Supreme Court in Jacob Mathew v. State of Punjab, the court determined that the allegations failed to meet the required threshold for criminal prosecution. Consequently, the court quashed the FIR, finding that the medical records and expert opinions did not support a criminal charge.

HELD The High Court quashed the FIR, holding that under criminal law, a medical practitioner is only required to bring a reasonable average degree of skill and care. A person is not liable in negligence simply because another professional with superior expertise would have chosen a different course of treatment, provided the practice adopted was accepted by a responsible body of medical men.

> “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, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way...”

HIGH COURT OF PUNJAB AND HARYANA · 2010 SOURCE PHHC010324352007

10 Dr. Pabitra @ Pabitra Kumar Biswas v. The State of West Bengal & Anr.

CALCUTTA HIGH COURT · 2023-05-08 · CRR/3649/2016

The petitioner, a doctor, challenged lower court orders refusing to terminate criminal proceedings initiated against him under Section 304A of the Indian Penal Code. The prosecution alleged that the petitioner was culpably negligent in treating a minor patient who died under his care at a government hospital. The petitioner sought to stop the proceedings, arguing that his conduct did not meet the high standard of gross negligence required for medical professionals to be held criminally liable, citing established Supreme Court precedents like Jacob Mathew v. State of Punjab.\n\nThe High Court reviewed the legal standards for professional medical negligence. It emphasized that a mere error of judgment or a failure to achieve a successful outcome does not automatically constitute criminal negligence. The court determined that the prosecution must establish a high degree of negligence to proceed, and finding insufficient evidence of gross misconduct, it allowed the petition and quashed the criminal proceedings against the doctor.

HELD The High Court quashed the criminal case, highlighting that any conduct falling short of recklessness and deliberate wrongdoing cannot form the basis of criminal liability. The court affirmed that the Bolam test acts as a touchstone in India, protecting doctors from criminal prosecution so long as they act in accordance with standard medical practices.

> “Every medical professional or doctor has a duty of care t owards their patients and when they commit a breach of this duty of care it causes injury to the patients and gives the patient ’s right to bring an action against negligence... The Court has stated that ‘any conduct falling shor t of recklessness and deliberate wrongdoing should not b e the subject of criminal liability.’”

CALCUTTA HIGH COURT · 2023 SOURCE WBCHCA0541332016

11 Arun Kumar Manglik v. Chirayu Health and Medicare Private Ltd.

SUPREME COURT OF INDIA · 2019-01-09 · 2019 INSC 43

This case involved a claim of medical negligence following the death of the appellant's wife from dengue fever. The court found that the respondent-hospital failed to provide timely and appropriate medical care, specifically by failing to monitor the patient's critical blood parameters between admission and the time of her death, which violated both WHO and national medical guidelines. While the court held the hospital liable, it exempted the hospital director from personal liability as they were not a treating physician.\n\nThe court emphasized that the standard of care for medical professionals must balance technical competence with the realities of available infrastructure. It also affirmed that the contribution of a non-working spouse (home-maker) has significant economic value that must be accounted for when calculating compensation.

HELD The Supreme Court noted that the standard of care must be judged in light of the knowledge available at the time of the incident, rather than the date of trial. It reviewed the evolution of the Bolam test, observing that English courts have moved towards a nuanced test (*Bolitho*) requiring the expert opinion supporting a doctor's action to stand to reason and show a logical basis.

> "Two things are pertinent to be noted. Firstly , the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time on which it is suggested as should have been used.""

SUPREME COURT OF INDIA · 2019 SOURCE ESCR010006272019

12 Naval Singh Jatav v. The State of Madhya Pradesh and Others

HIGH COURT OF MADHYA PRADESH · 2020-03-06 · WP/26704/2019

The petitioner filed a writ petition seeking compensation and an investigation into the deaths of his wife and child, alleging medical negligence by staff at a government maternity hospital. He also requested the issuance of birth and death certificates and a permanent injunction against the health services.\n\nThe Court dismissed the petition, stating that the allegation of medical negligence involves disputed questions of fact that cannot be determined in summary writ proceedings. Citing Supreme Court precedents on medical negligence, the Court held that the petitioner has an alternative, efficacious remedy and should instead approach the District Consumer Forum to seek redressal for his grievances.

HELD The High Court declined to entertain the writ petition, highlighting that summary writ jurisdictions under Article 226 are unsuited to resolve complex disputed facts of medical negligence. Relying on *Jacob Mathew*, the court noted three considerations for any forum: legal procedures must be founded on firm scientific grounds, real causes of harm must be identified, and courts must avoid over-suspicion of attending doctors to prevent defensive medicine.

> "At least three weighty considerations can be pointed out which any forum trying the issue of medical negligence in any jurisdiction must keep in mind. These are: (i) that legal and disciplinary procedures should be properly founded on firm, moral and scientific grounds; (ii) that patients will be better served if the real causes of harm are properly identified and appropriately acted upon; and (iii) that many incidents involve a contribution from more than one person, and the tendency is to blame the last identifiable element in the chain of causation, the person holding the 'smoking gun'."

HIGH COURT OF MADHYA PRADESH · 2020 SOURCE MPHC030294652019

13 Pramod Yashwantrao Gurjar v. State of Maharashtra

BOMBAY HIGH COURT · 2023-09-08 · APL/190/2012

The applicant, a medical practitioner, sought to quash an FIR and charge-sheet alleging medical negligence under Section 304-A of the Indian Penal Code following the death of a patient during a cesarean delivery. The prosecution alleged that an incisional cut to the urinary bladder caused fatal hemorrhage. The Court observed that medical records indicated the doctor followed standard protocols, including calling for a second opinion and emergency surgical intervention when the patient suffered from Disseminated Intravascular Coagulation. Citing established legal precedents, the Court concluded that the allegations did not constitute the 'gross negligence'

required for criminal liability. Finding no prima facie case of rash or negligent conduct, the Court quashed the criminal proceedings.

HELD The High Court quashed the criminal case, reaffirming that a simple lack of care, an error of judgment, or an accident does not establish professional medical negligence. So long as a medical professional follows an acceptable, standard practice, they cannot be held criminally liable because a better alternative or highly expert course of action was available.

> "A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed."

BOMBAY HIGH COURT · 2023 SOURCE HCBM040059502012

14 Spring Meadows Hospital v. Harjol Ahulwalia

SUPREME COURT OF INDIA · 1998-03-25 · 1998 INSC 154

The case concerns a minor child who suffered irreversible brain damage and was reduced to a vegetative state due to medical negligence at a hospital, where an unqualified nurse administered an intravenous injection without conducting a sensitivity test. The Supreme Court of India upheld the decision to award compensation to both the minor child and his parents. The court clarified that under the Consumer Protection Act, the definition of a 'consumer' includes not only the person who hires or avails services but also the beneficiaries of those services. Consequently, the parents were entitled to compensation for their mental agony and the lifelong care required for their child, in addition to the damages awarded to the child.

HELD The Supreme Court held that the Consumer Protection Act is a beneficial, socially oriented legislation that should receive a liberal construction. In cases of medical services, the definition of "consumer" includes the child as well as the parents who hired the service. Thus, parents are entitled to claim compensation for mental agony and loss arising from the medical negligence inflicted on their child.

> "The Consumer Protection Act confers jurisdiction on the Commission in respect of matters where either there is defect in goods or there is deficiency in service or there has been an unfair and restrictive trade practice or in the matter of charging of excessive price. The Act being a beneficial legislation intended to confer some speedier remedy on a consumer from being exploited by unscrupulous traders, the provisions thereof should receive a. liberal construction."

SUPREME COURT OF INDIA · 1998 SOURCE ESCR010001581998

15 Jyoti Devi v. Suket Hospital & Ors.

SUPREME COURT OF INDIA · 2024-04-23 · 2024 INSC 330

The appellant underwent an appendectomy at the respondent hospital, after which she suffered continuous pain for years. It was later discovered that a surgical needle had been left in her abdomen, requiring a second surgery for its removal. While the District Forum awarded the appellant Rs. 5 lakhs in compensation for medical negligence, the State Commission reduced it to Rs. 1 lakh, and the NCDRC subsequently increased it to Rs. 2 lakhs citing the 'eggshell skull' rule. The Supreme Court set aside the lower appellate orders, noting that the 'eggshell skull' rule was misapplied as the appellant had no pre-existing condition, and restored the original District Forum award of Rs. 5 lakhs, finding it to be just and equitable compensation.

HELD The Supreme Court restored the compensation of Rs. 5 lakhs, affirming that the three essential ingredients to determine medical negligence are: (1) a duty of care, (2) breach of that duty, and (3) resulting damage directly attributable to the breach. The court held that leaving a foreign surgical object in a patient's body is a patent breach of the standard of a reasonably competent practitioner.

> “As can be culled out from above, the three essential ingredients in determining an act of medical negligence are : (1.) a duty of care extended to the complainant, (2.) breach of that duty of care, and (3.) resulting damage, injury or harm caused to the complainant attributable to the said breach of duty. However, a medical practitioner will be held liable for negligence only in circumstances when their conduct falls below the standards of a reasonably competent practitioner.”

SUPREME COURT OF INDIA · 2024 SOURCE ESCR010002382024

16 Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Others

SUPREME COURT OF INDIA · 2009-08-07 · 2009 INSC 1025

This case involved allegations of medical negligence leading to the death of a patient suffering from Toxic Epidermal Necrolysis. The court emphasized that for criminal negligence under the Indian Penal Code, the conduct must demonstrate gross or high-degree negligence that no prudent medical professional would exhibit. The Supreme Court found that individual negligence was difficult to isolate in a criminal context, particularly given the multiple doctors and hospitals involved. However, the court identified clear instances of medical deficiency and failure to follow standard treatment protocols regarding steroid administration and nursing care. Consequently, the criminal appeals were dismissed, while the civil matter regarding compensation was remitted back to the National Consumer Commission for final determination.

HELD The Supreme Court held that the doctrine of "cumulative effect" is not applicable in criminal law to determine individual liability under Section 304A IPC, making it difficult to prosecute multiple treating doctors when individual culpability cannot be isolated. However, in civil/consumer law, the cumulative effect of the negligent actions of multiple doctors and hospitals constitutes actionable "deficiency in service" for which the patient must be compensated.

> “The jurisprudential concept of negligence }- differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much high degree.”

SUPREME COURT OF INDIA · 2009 SOURCE ESCR010001982009

17 Dr. G.S. Chandraker v. State and Another

HIGH COURT OF DELHI · 2007-07-30 · CRL.REV.P./466/2005

The petitioner filed a criminal revision against an order discharging a doctor accused of medical negligence following the death of his 14-year-old son, who suffered from severe asthma. The petitioner alleged the doctor refused to provide immediate emergency care at the hospital. However, a medical board concluded the doctor acted appropriately by referring the patient to an associated hospital because required resuscitation equipment was unavailable. The High Court reviewed the trial court's order and affirmed the discharge, noting that criminal negligence requires a high degree of gross negligence, and a doctor cannot be held criminally liable if they follow a practice acceptable to the medical profession at the time, even if alternative methods or equipment were unavailable.

HELD The High Court upheld the discharge of the accused physician. The court determined that advising a patient to transfer to an associated facility when essential resuscitation equipment is unavailable does not constitute criminal negligence, as immediate makeshift attempts could result in greater delay and harm.

> “The trial court carefully considered all the materials on record... It concluded that the testimony of the complainant indicated that when the patient was taken to emergency, he was attended to by the accused, who checked him. The proper instruments (i.e adult sized endotrachaeal tubes and laryngoscope) were not available. The court observed that on this, the accused advised the complainant to shift the child to the casualty of SSK Hospital, which were in the same premises.”

HIGH COURT OF DELHI · 2007 SOURCE DLHC010557502005

18 Kusum Sharma v. Batra Hospital & Medical Research Centre

SUPREME COURT OF INDIA · 2010-02-10 · 2010 INSC 95

This appeal concerned allegations of medical negligence leading to the death of a patient following surgery for an abdominal tumor. The appellants sought compensation under the Consumer Protection Act, 1986, alleging deficiency in service and medical negligence by the hospital and treating doctors. The National Consumer Disputes Redressal Commission dismissed the complaint, finding no negligence.\n\nThe Supreme Court dismissed the appeal, holding that a medical professional is not negligent if they exercise a reasonable degree of skill and knowledge acceptable to the medical profession. The court emphasized that doctors should not be unnecessarily harassed for outcomes that differ from expectations, and that a mere deviation from a specific practice does not constitute negligence unless it falls below the standard of a reasonably competent practitioner.

HELD The Supreme Court formulated eleven comprehensive guidelines for courts dealing with medical negligence. It ruled that taking a calculated professional risk involving a higher element of danger to redeem a critically ill patient does not constitute negligence, provided the doctor acted with honest belief, reasonable skill, and in the patient's interest.

> "The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving KUSUM SHARMA v. BATRA HOSPITAL & MEDICAL . 691 RESEARCH CENTRE lesser risk but higher chances of failure. Just A because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence."

SUPREME COURT OF INDIA · 2010 SOURCE ESCR010004772010

19 Vinod Jain v. Santokba Durlabhji Memorial Hospital & Anr.

SUPREME COURT OF INDIA · 2019-02-25 · 2019 INSC 266

The appellant alleged medical negligence leading to his wife's death after she was treated for fever and an dislodged nasal tube at the respondent hospital. The State Commission originally awarded compensation, but the National Consumer Disputes Redressal Commission (NCDRC) overturned this, ruling that the medical decisions were professional assessments rather than negligence. The Supreme Court upheld the NCDRC's decision, affirming that a doctor is not negligent if they act in accordance with a practice accepted as proper by a reasonable body of medical professionals. The Court held that the appellant failed to prove an unexplained deviation from standard protocol and noted that the patient's death resulted from multiple comorbidities.

HELD The Supreme Court affirmed that professional liability is established only if the doctor lacks requisite skills or fails to exercise them with reasonable competence. Citing Halsbury's Laws of England, the court held that a complainant must establish that a practitioner adopted a course of action that no medical professional of ordinary skill would have taken under ordinary care.

> "Thus, a liability would only come, if (a) either the person (doctor) did not possess the requisite skills, which he professed to have possessed; or (b) he did not exercise, with reasonable competence in a given case, the skill which he did possess. It was held not to be necessary for every professional to possess the highest level of expertise in that branch in which he practices."

SUPREME COURT OF INDIA · 2019 SOURCE ESCR010007172019

20 Dr. Dilip Amonkar v. State of Goa

BOMBAY HIGH COURT · 2017-08-22 · CRIR/37/2017

The case involved criminal charges against two doctors following the death of a 16-year-old patient who underwent appendectomy surgery. The petitioners sought to challenge a trial court order that directed framing

charges against them under Section 304-A of the Indian Penal Code (causing death by negligence) after other more serious charges were dropped. The petitioners argued that there was insufficient evidence of negligence and that the procedures followed were consistent with standard emergency medical care. The High Court reviewed the medical records, including the autopsy and histopathology reports, and the testimony of the patient's mother. It concluded that there was sufficient prima facie material regarding the failure to conduct mandatory pre-operative tests to justify proceeding to trial on the charge of criminal negligence.

HELD The High Court refused to quash the charges at the initial stage, ruling that whether the surgeons exercised reasonable competence must be determined through trial. It noted that the *Jacob Mathew* guidelines require an independent medical opinion to support a private complaint, but if a medical committee's report notes a critical failure to conduct mandatory pre-operative tests, a prima facie case exists.

> "A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another 26 competent doctor to support the charge of rashness or negligence on the part of the accused doctor."

BOMBAY HIGH COURT · 2017 SOURCE HCBM050021422017

21 Dr. Premlata Bansal v. Manoj

HIGH COURT OF MADHYA PRADESH · 2016-02-22 · MCRC/1430/2010

This case involved a petition to quash criminal proceedings against doctors accused of medical negligence resulting in the death of a patient. The patient had undergone a successful operation and was discharged, only to pass away from renal failure six months later while under the care of other medical practitioners. A medical board and police investigation both concluded there was no negligence by the petitioners. Applying the principles from Jacob Mathew v. State of Punjab, the court held that the criminal prosecution lacked merit and failed to establish the requisite gross negligence. Consequently, the court quashed the criminal case pending against the doctors.

HELD The High Court quashed the criminal proceedings, noting that the patient's death from renal failure occurred six months after a successful uterus removal operation and while under other doctors' care. The court held that to prosecute a professional criminally, the hazard taken must be so extreme that the resulting injury was imminent, and a private complaint must be dismissed if an expert medical board finds no negligence.

> "To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent."

HIGH COURT OF MADHYA PRADESH · 2016 SOURCE MPHC020062282010

22 Achutrao Haribhau Khodwa v. State of Maharashtra

SUPREME COURT OF INDIA · 1996-02-20 · 1996 INSC 289

The patient died following a sterilization procedure at a government hospital after a surgical mop was left in her peritoneal cavity, leading to fatal peritonitis. The appellants sued the State and hospital staff for medical negligence. The High Court dismissed the claim, arguing that the hospital's operation was a sovereign function and that negligence was not conclusively proven. The Supreme Court overturned this, holding that operating a hospital is not a sovereign function, rendering the State vicariously liable for the negligence of its medical staff. The Court ruled that the doctrine of res ipsa loquitur applied, as the presence of the mop was a clear instance of negligence that directly caused the patient's death.

HELD The Supreme Court applied the doctrine of *res ipsa loquitur* in a civil tort action. It held that leaving a surgical mop inside a patient's peritoneal cavity during a minor sterilization procedure is a patent act of negligence. The court further clarified that operating a public hospital is not a sovereign function, making the State vicariously liable for the negligent actions of its medical officers.

> "The skill of medical practitioners differs from doctor to doctor. The nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has G performed his duties to the best of his ability and with due care and caution... both the courts, in a nutshell, are that Chandrikabai was admitted to the government hospital where she delivered a child on 10th July, 1963. She had a sterlisation operation on 13th July, 1963... and due to the negligence of respondent No. 2 a mop (towel) was left inside her peritonial cavity."

SUPREME COURT OF INDIA · 1996 SOURCE ESCR010003121996

23 Neera Garg v. State of Haryana

HIGH COURT OF PUNJAB AND HARYANA · 2007-01-10 · CRM/63512/2005

The petitioners, two doctors, sought to quash a criminal complaint and a subsequent summoning order issued by a Chief Judicial Magistrate for alleged medical negligence resulting in the death of a newborn baby. Although the police investigation initially filed a cancellation report, concluding there was no evidence of criminal negligence, the Magistrate proceeded to summon the doctors based on a protest petition filed by the complainant. The High Court reviewed the procedural propriety of the Magistrate's decision, noting that the trial court failed to adequately consider or provide reasons for disregarding the police's investigative findings before issuing the summons.

HELD The High Court quashed the summoning order, observing that forced fear of criminal prosecution paralyzes a physician's ability to make snap decisions in emergency settings. The court ruled that magistrates must carefully evaluate whether the high threshold of gross criminal negligence is met, especially when a police report suggests cancellation of the complaint.

> "A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end dose of medicine to his patient. 29. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason- whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine."

HIGH COURT OF PUNJAB AND HARYANA · 2007 SOURCE PHHC010338502005

24 Samira Kohli v. Dr. Prabha Manchanda & Anr.

SUPREME COURT OF INDIA · 2008-01-16 · 2008 INSC 56

The appellant, an unmarried woman, visited the respondent's clinic for a diagnostic ultrasound and laparoscopic test. While she was under anesthesia for the procedure, the doctor performed a radical surgery, removing her uterus and ovaries without her informed consent. The National Consumer Commission dismissed her complaint, but the Supreme Court of India allowed her appeal. The Court held that a patient's right to bodily integrity is inviolable, and consent for a diagnostic procedure does not authorize therapeutic or radical surgery unless an emergency exists to save the patient's life. Performing such surgery without explicit consent constitutes a tortious act of battery and a deficiency in service. The Court awarded the appellant compensation for the unauthorized medical intervention.

HELD The Supreme Court held that consent for a diagnostic procedure does not authorize a doctor to perform an additional, radical therapeutic surgery (such as removing organs) unless an immediate life-threatening emergency exists. Subjecting a patient to unauthorized procedures violates their right to bodily integrity, constitutes a tort of battery, and represents a deficiency in service under consumer law.

> "Unless the unauthorized additional or further procedure 0 is necessary in order to save the life or preserve the health of the patient and it would be unreasonable (as contrasted from being merely inconvenient) to delay the further procedure until the patient regains consciousness and takes a decision, a doctor cannot perform such procedure E without the consent of the patient."

SUPREME COURT OF INDIA · 2008 SOURCE ESCR010008192008

25 Dr. (Mrs.) Chanda Rani Akhouri & Ors. v. Dr. M.A. Methusethupathi & Ors.

SUPREME COURT OF INDIA · 2022-04-20 · 2022 INSC 447

This appeal concerned allegations of medical negligence following the death of a patient after a kidney transplantation. The appellants contended that the treating doctors and hospital failed to provide proper post-operative and follow-up care, leading to the patient's death. The Supreme Court upheld the dismissal of the complaint, ruling that medical practitioners are not liable simply because a treatment fails or due to an error in judgment in choosing a reasonable course of treatment. The Court clarified that liability arises only if a practitioner's conduct falls below the standard of a reasonably competent professional. As the appellants failed

to provide evidence of negligence and the medical protocols followed were deemed appropriate, the Court found no basis to interfere with the lower commission's decision.

HELD The Supreme Court dismissed the appeal, holding that a medical practitioner is not liable simply because a patient could not be saved, provided the protocol administered was supported by standard professional practices. Professional negligence cannot be established on the basis of post-operative deterioration unless there is proof that the treatment fell below the standard of a reasonably competent practitioner in the field.

> “It clearly emerges from the exposition of law th at a medical practitioner is not to be held liable simply bec ause things went wrong from mischance or misadventure or through an err or of judgment in choosing one reasonable course of trea tment in preference to another… At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a r easonably competent practitioner in his field.”

SUPREME COURT OF INDIA · 2022 SOURCE ESCR010004522022