NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1909 OF 2018

(Against the Order dated 04/06/2018 in Complaint No. 41/2017 of the State Commission Punjab)

1. MAX SUPER SPECIALITY HOSPITAL BATHINDA
THROUGH ITS AUTHORISED REP. NH-64, NEAR
DISTRICT CIVIL HOSPITAL MANSA ROAD
BHATINDA
PUNJAB 151 001 .....Appellant(s)

Versus

1. ROSHAN LAL JAGGA & ORS.
S/O. SHRI GOPI RAM, MITHAN LAL STREET
SRI MUKTSAR SAHIB
PUNJAB
2. SUNIL JAGGA
S/O. ROSHAN LAL JAGGA, MITHAN LAL STREET
SRI MUKTSAR SAHIB
PUNJAB
3. RAMAN JAGGA (DAUGHTER)
W/O. SH SANDEEP BHATEJA, R/O. JAIN NAGRI,
ABOHAR
FAZILKA
4. RAJNI (DAUGHTER)
W/O. SH. GAGAN GOKLANEY R/O. OPP. CENTRAL JAI
FEROZPUR
5. SUNITA (DAUGHTER_
W/O. SH. AMIT GAKHAR, R/O. GURUSHARSAHAI
FEROZPUR
6. NISHU (DAUGHTER)
W/O. SH. JATINDER SACHDEVA, R/O. H NO 10/108,
PUNJAB AGRICULTURE CAMPUS
LUDHINA .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER

FOR THE APPELLANT :

Dated : 03 January 2025

ORDER

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER, MEMBER

For the Appellant Mr Puneet Kumar Saxena, Advocate

For the Respondent Mr Shakti K Patanaik, Advocate

ORDER

PER SUBHASH CHANDRA

1. The Petitioners are before us in challenge to the order dated 04.06.2018 in Complaint No. 41/2017 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh (for short, "State Commission") holding them liable for medical negligence in the treatment of the Respondent's wife who expired due to not being provided medical treatment for lung and kidney ailments and awarding a lump sum compensation of Rs.10,00,000/- to be paid within 45 days failing which with interest @ 8% from the date of filing of complaint till realization.

2. For the reasons stated in the IA for the condonation of delay, the delay of 111 days in the filing of this Appeal was condoned in the interest of justice.

3. We have heard the learned counsel for the parties and perused the records carefully.

4. The brief conspectus of facts in the case is that the Respondent's wife, Smt. Raj Kumari ("patient") was admitted to the Appellant no.1 Hospital on 31.12.2014 with symptoms of drowsiness and was admitted to by a team of doctors including Dr. Sharad Gupta, Medical Officer for Bradycardia and Dyspnoea. According to the Respondent, his wife did not have any heart related ailments and as the hospital lacked any specialists for kidney and lung issues, her condition deteriorated while in hospital. She was discharged on 12.01.2015 and expired on 07.02.2015. The cause of death has been mentioned as *"Septicaemic Shock. Acute Respiratory Distress Syndrome. Multi Organ Dysfunction Syndrome. Acute Kidney Injury. Lower Respiratory Tract Infection (Cause HTN?) and Chronic Obstructive Pulmonary Disease."* Respondent filed a complaint before the State Commission praying for the following directions:

> (i) To direct opposite parties to refund an amount of Rs.2,57,066/- incurred towards the treatment of the wife of the complainant paid to the opposite party along with 18% interest from 31.12.2014 to 12.01.2015 till realisation

(ii) To direct the opposite parties to pay compensation in the sum of Rs.25,00,000/- for the precious loss of a family member of the complainant

(iii) To direct the opposite parties to pay compensation in the sum of Rs.15,00,000/- on account of mental agony, physical harassment, deficiency in service

(iv) To direct the opposite parties to pay cost of litigation to the tune of Rs.1 lakh to the complainants.

5. The State Commission, after considering the submissions of both sides, has held as under:

> 14. Sequel to the above, we are of the opinion that the patient was admitted in OP Hospital. **Apart from heart problem the patient was also suffering with kidney and lungs problem, but no specific treatment was given to the patient for its kidney and lungs problem, and they did not have any specialists in that branch in their hospital. In case they have given the heart treatment but did not give any treatment to the kidney and lungs the problem aggravated. Therefore, the patient could not improve in the hospital of the OP and under the compelling circumstances the patient was got discharged LAMA on 12.01.2015.** The patient was taken to some other hospital including DMC & H, Ludhiana but the patient did not respond to the treatment and died on 07.02. 2015. **For not giving treatment to kidney and lungs problem, had deteriorated the condition of the patient, which ultimately led to her death. Therefore, we are of the considered opinion that there is medical negligence or deficiency in service on the part of OP for not giving the treatment to kidney and lungs problem of the patient which deteriorated the condition of the patient and ultimate death of the patient.** For medical negligence or deficiency in service on the part of OP, OP is directed to pay Rs 10 lakhs as lump sum amount to the complainant which includes compensation and litigation expenses.
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> 15. The amount is ordered to be paid within 45 days of the receipt of the copy of the order, failing which it will carry interest at 8% pa from the date of filing the complaint till payment. In case the OP fails to comply with the above directions, the complainants will be at liberty to execute the order by filing application under sections 25 and 27 of the CP Act against the OP.
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> [Emphasis added]

6. According to the Appellants, the complaint before the State Commission was barred by limitation as the patient had been discharged on 16.01.2015 while the complaint was dated 21.01.2017**.** It was also submitted that as the patient had availed treatment in other hospital(s) after taking discharge from the appellant hospital, there was misjoinder of parties since these hospitals and doctors had not been impleaded in the instant case. It was submitted that since the patient had been discharged from the Appellant hospital on 16.01.2015, albeit against medical advice, she had ceased to be a "consumer" under the provisions of the Act. It was averred that no expert evidence had been produced before the

State Commission in support of the allegation of medical negligence. The Appellants contended that the Respondent's wife was admitted in the Emergency Department in a critical condition on the reference of Dr.Kamra Hospital on 31.12.2024. It was stated that the impugned order was erroneous in that it recorded that no treatment was provided to the Respondent for kidney and lung treatment while she was admitted in the Appellant no. 1 hospital.

7. It was also contended that the attendants of the patient had had her discharged LAMA or "Left Against Medical Advice" and the contention that there were no medical facilities in the hospital for kidney and lung related treatment was incorrect. It was submitted that the Appellant hospital was a 200 bedded hospital with multiple medical disciplines such as Neurosciences, Orthopaedics, Cardiac Sciences, Cancer, Diabetic care, Gynaecology and Obstetrics, etc. The patient was aged 69 years and at the time of admission in Emergency had a feeble pulse, drowsiness, breathlessness and had complaint of DOE for 5 days. She was assessed by the critical care team and also seen by various other doctors regularly. There was no allegation of negligence or deficiency either during the stay in hospital or thereafter for more than two years against either the treating doctors or para-medical staff. The treatment provided was stated to be as per standard medical practice and as per proper medical procedure by qualified and competent medical staff at the hospital. The patient mainly suffered from *Bradycardia* which is a medical condition wherein typically the heart rate is of under 60 beats per minute (BPM) in adults and *Dyspnoea* which is a condition of shortness of breath involving distress in breathing generally due to asthma, pneumonia, cardiac ischemia, interstitial lung disease, congestive heart failure, chronic obstructive pulmonary disease or psychogenic causes, such as panic disorder and anxiety. The patient was a known case of Diabetes Mellitus Type II, Hypertension since 2011 and Coronary Artery Disease. According to the Appellant, the patient was initially stabilized and investigated through various blood tests including for urea, creatinine, Sodium and Potassium, and Chest Xray, ECG and ECHO which revealed right heart failure with moderate tricuspid regurgitation. She was intubated for oxygen the next day in order to maintain carbon dioxide and oxygen levels in view of drowsiness and was put on dialysis as advised by nephrologist due to decreased urine output. In view of diagnosis of pneumonitis with effusion, Xray and CT Chest was done on 05.01.2015 and antibiotics revised as per culture report of lung secretion. The patient was extubated from ventilator on 08.01.2015 and injection Lasix started on 10.01.2015 to improve urine output and increased on 11.01.2015. Although the patient needed further hospitalization despite some improvement, her relatives had her discharged against medical advice on 12.01.2015 which was noted accordingly in the Discharge Summary Report which reads as under:

> **<u>Condition at the time of discharge:</u>**
>
> PT NEED FURTHER HOSPITALISATION BT PT GOING AGAINST MEDICAL ADVICE (LAMA)

According to the Appellants, the medical record of the Appellant hospital clearly revealed that the Respondent's wife was in a critical condition at the time of admission on 31.12.2014

but had improved by 12.01.2015 and that during this period she had been treated for heart, kidney and lung related ailments as per the standard protocol prescribed.

8. Appellant's counsel submitted that the Respondent had deliberately concealed medical records pertaining to treatment in the other hospitals after leaving the appellant hospital on 12.01.2015, except the cause of death as per the death certificate. The Appellant sated that it cannot be held liable for any allegations when no evidence or records pertaining to treatment at the other hospital has been brought on the record. It was denied that Dr. Jagdeep was summoned from outside by the appellant hospital since Dr. Jagdeep Balyan was a urologist in the employ of the appellant hospital itself. According to the appellants, the patient was treated by a multi-disciplinary team of doctors which addressed all issues, including lung and kidney problems. Dialysis was undertaken to address the renal problem of decreased urine due to shock. She was extubated on Day 2 i.e. 08.01.2015.

9. The complaint was averred to be based on a wrong interpretation of the recording in the Discharge Summary stating *"KCO DM, HTN (ICD 799.9) Onset 0/0/11"* which was made the basis to argue that

> *" This term means that the cause of problem is not known. From this, it is clear that the Max Hospital could not trace out the cause of the problem to the patient and as such there was deficiency in service which was to be given to the patient and as a result of which the patient's condition deteriorated and ultimately she died on 07.02.2015. If the problem (could not be) traced out by the Max Hospital, it was incumbent upon it to refer the patient to some specialist hospital and (by) not referring the patient by the doctors of Max Hospital shows the ulterior motive of the doctors of Max Hospital by retaining the patient."*
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> (Emphasis added]

It was argued that the burden of proof lay on the Respondent as it was the party alleging negligence and deficiency in service which had not been discharged in the instant case.

10. Reliance was placed on judgment of the Hon'ble Supreme Court in ***CP Sreekumar (Dr) MS Ortho Vs. Ramanujan,*** 2009 (7) SC 130; ***Nizam Institute of Medical Sciences Vs. Prasanth s Dhanaka & Ors.,*** 2009 (3) CLT 430 (SC); ***Jacob Mathew Vs. State of Punjab & Anr.,*** (2005) 3 CLT 358 (SC) and ***Kusum Sharma & Ors. Vs. Batra Hospital,*** 2010 (2) CLT 282 (SC) to contend that negligence could not be attributed to a doctor so long as he performs his duties with reasonable skill and competence and that merely because a doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession as the prescribed procedure on the day of the treatment. A medical practitioner would be liable only when his conduct fell below the standards of a reasonably competent practitioner in the field. Appellant denied that the patient was admitted under Dr. Sharad Gupta since he was under a team of doctors from different disciplines in view of the critical condition of the patient. Further, no details of treatment prior to 31.12.2014 and post 12.01.2015 had been brought on record by the Respondent.

11. It was also contended that as regards the compensation claimed, no case had been made out with regard to establishing, as per the law, that a duty had been cast on a person (doctor) which was violated and damage to have been caused due to such violation. The damage claimed was also required to be quantified with proof and justification for its consideration.

12. Appellant contended that the State Commission had erred in not appreciating that the dialysis was prescribed by the Senior Consultant (Medicine) which was evidence that the kidney issue was being addressed. The creatinine levels as per test and hospital records showed a downward trend which also indicated that issues pertaining to the kidney related issues were responding to treatment. Since examination of the patient had indicated that she was suffering from Bradycardia and Dyspnoea, and one of the symptoms of this was pneumonia, the allegation that there was a failure to diagnose correctly was argued to be false and intended to mislead. It was argued that the State Commission, had through non application of mind, incorrectly applied the principle of *res ipsa loquitur* and arrived at a finding of medical negligence.

13. On the other hand, the Respondents argued that the Appellants had been negligent in providing treatment as the patient did not have any heart ailment as on 31.12.2014 when she was admitted to the Appellant hospital but was suffering from kidney and lung related issues which the Appellants failed to treat as they did not have any specialists for kidney and lung related issues. Hence, the patient was had discharged from the hospital on 12.01.2015 and taken to DMC&H, Ludhiana and thereafter to Medicity Hospital, Gurgaon but the patient did not respond to treatment and expired on 07.02.2015. Respondent submitted that the patient was suffering even after discharge from hospital and hence there was a continuing cause of action due to medical negligence till she expired. Reliance was placed on the judgement of the Hon'ble Supreme Court in ***VN Sreekhande vs Anita Sena Fernandez,*** (2011) 1 SCC 53 wherein it was held that in cases of medical negligence no straight-jacket formula could be applied for determining as to when the cause of action accrued to the consumer and that each case was to be decided on its own facts.

14. It was contended by the Respondent that LAMA discharge on 07.02.2015 did not conclusively establish that the effect of medical negligence ended on that date. Various judgments of the State Commission in this regard were also referred to. As regards the non-joinder of parties such as the insurance company was concerned, it was argued that the State Commission had rightly held that no details of the insurance policy were provided in the Written Statement and no separate application was filed by the Opposite Parties/Appellants and, therefore, the same could not be considered. As regards medical negligence and unfair trade practice, it was submitted that the patient was admitted on 31.12.2014 and after medical tests including ECHO, it was found that the patient was not suffering from any heart ailment. However, the patient remained admitted under Dr. Sharad Gupta, Cardiologist as was evident from the documents pertaining to treatment in the hospital. However, regarding the specific allegation in the complaint filed by the respondent that the opposite party did not have experts relating to lungs and kidney issues, the Appellants had admitted that specialists as required were called when needed by the doctor on duty. Hence, there was an admission on part of the appellants in this regard. As per the documents of the appellant, it was only on 10.01.2015 that Dr. Jagadeep Balyan, who was a Urologist and not Nephrologist, was called to see the patient. According to the Respondent, the patient should have been treated by a Nephrologist since the investigation reports of the hospital itself indicated that the creatinine

serum had exceeded the maximum level and therefore it was evident that she was suffering from a kidney ailment which required treatment by a Nephrologist who was not available in the Appellant hospital. The patient was kept admitted in the Coronary Care Unit (CCU) as per records of the appellant hospital from 31.12.2014 till 12.01.2015 which was meant only for patients with heart ailment. The appellant also did not refer the patient to another hospital where a Nephrologist was available and therefore this was both a deficiency in service as also an unfair trade practice

15. It is contended by the Respondent that the patient also had a lung ailment per investigation report dated 05.01.2015 and was required to be examined and treated by a Chest Physician/Specialist. According to the Respondent, this specialist was not available with the hospital. The Respondent contends that the final bill of the of the Appellant hospital indicating visits by various doctors did not mention the visit of any Nephrologist or Chest Physician. After discharge on 12.01.2015 the patient was taken to the Dayanand Medical College and Hospital, Ludhiana and the Discharge Summary of this hospital showed that the patient was admitted under a Nephrologist and Chest Physician. It was denied that the patient had left the appellant hospital against medical advice (LAMA) and that the hospital had only subsequently stated this by way of a seal on the Discharge Summary. This document was contested by the respondent. According to the Respondent, the initial burden of proof had been discharged regarding medical negligence along with documentary evidence to establish that when the patient was not suffering from a heart ailment, admission to the CCU itself established medical negligence. On the other hand, the Appellant hospital had failed to establish why the patient was kept in a wrong medical unit which resulted in deficiency in service. It was therefore argued that the appeal be dismissed with heavy costs.

16. The preliminary issues raised in this appeal are considered at the outset. In view of the fact that the limitation period must necessarily be considered from the date of knowledge of the fact, the contention of the respondent is considered valid since the death of his wife occurred on 07.02.2015 and the Death Certificate which mentioned the cause of death was available to him only thereafter. Having availed the services of the appellant hospital while admitted there from 31.12.2014 to 16.01.2015, we consider the respondent's wife to have been a "consumer" *qua* the appellants since a consideration for medical services had indeed been paid and received for various treatments during this period of hospitalization as an in-patient. As for the non-joinder of parties, it is for the respondent as the complainant to have impleaded the parties. The insurance company was in any case not a necessary and proper party in the case which essentially pertained to medical negligence on part of the hospital and its doctors.

17. The moot issue in this case relates to alleged medical negligence with regard to treatment of the patient insofar as treatment for ailments for which doctors were not available in the petitioner hospital is concerned. According to the respondent, the patient (his late wife) was suffering from lung and kidney ailments whereas the petitioner hospital treated her under the care of a doctor with specialization in cardiology and was therefore liable for medical negligence.

18. The law relating to what constitutes medical negligence has been laid down in the Hon'ble Supreme Court's judgment in ***Jacob Mathew Vs. State of Punjab & Anr.***, in Criminal Appeal Nos. 144-45 of 2004 decided on 05.08.2005, (2005) 6 SCC 1 which has

been relied upon by the State Commission. It is based on the ***Bolam Test*** (1957) 2 A11 ER 118. The test for medical negligence is based on the deviation from normal medical practice and it has been held that establishment of negligence would involve consideration of issues regarding

(1) *state of knowledge* by which standard of care is to be determined,

(2) *standard of care* in case of a charge of failure to (a) use some particular equipment, or (b) to take some precaution,

(3) *enquiry to be made* when alleged negligence is (a) due to an accident, or (b) due to an error of judgment in choice of a procedure or its execution. For negligence to be actionable it has been held that the professional either (1) professed to have the requisite skill which he did not possess, or (2) did not exercise, with reasonable competence, the skill which he did possess, the standard for this being the skill of an ordinary competent person exercising ordinary skill in the profession.

It was further held that simply because a patient did not respond favourably to a treatment or a surgery failed, the doctor cannot be held liable *per se* under the principle of *res ipsa loquitur*. In a claim of medical negligence, it was laid down that it was essential to establish that the standard of care and skill was not that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. For negligence to be actionable it has to be attributable and three essential components of "duty", "breach" and "resulting damage" need to be met, i.e.: (i) the existence of a duty to take care, which is owed by the defendant to the complainant; (ii) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and (iii) damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant.

19. It is apposite to consider that the Hon'ble Supreme Court in ***Jacob Mathew*** (supra) has laid down as under:

Paras 12,13, 38 and 48(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. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. **To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law, i.e., gross or 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.**

Paras 16, 14, 17. While negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public

generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen. It was the imperative duty of the accused person to have adopted. **A clear distinction exists between 'simple lack of care' incurring civil liability and 'very high degree of negligence' which is required in criminal cases**.

Paras 31, 30. The subject of **negligence in the context of the medical profession necessarily calls for treatment with a difference. There is a marked tendency to look for a human actor to blame for an untoward event**, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. An empirical study would reveal that the background to a mishap is frequently far more complex than may generally be assumed. It can be demonstrated that actual blame for the outcome has to be attributed with great caution. For a medical accident or failure, the responsibility may lie with the medical practitioner, and equally it may not. ….. **To hold in favour of existence of negligence, associated with the action or inaction of a medical profession, requires an in-depth understanding of the working a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability.**

Paras 48(2), 48(4), 19 and 24. Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. **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 professional 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**. The classical statement of law in Bolam case, (1957) 2 AII ER 118, at p.121.D F) [set out in para 19 herein], has been widely accepted as decisive, of the standard of care required both of professional men generally and medical practitioners in particular, and holds good in its applicability in India. **In tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioners exercising an ordinary degree of professional skill**. The fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge. It is not necessary for every professional to possess the highest level of expertise in that branch which he practises. Three 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 (that is, the time of incident) on which it is suggested as should have been used. Thirdly, when it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or

extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.

Para 26. No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career. Even in civil jurisdiction, the rule of *res ipse loquitur* is not of universal application and has to be applied with extreme care and caution to the cases of professional negligence and in particular that of the doctors. Else it would be counter-productive.

Paras 10, 11, 48(1). Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence, as recognised, are three: "duty", "breach" and "resulting damage", that is to say:

(i) The existence of a duty to take care, which is owed by the defendant to the complainant;

(ii) The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

(iii) Damage, which is both casually connected with such breach and recognised by the law, has been suffered by the complainant.

If the claimant satisfies the court on the evidence that these three ingredients are made out, the defendant should be held liable in negligence.

[Emphasis supplied]

The allegations of medical negligence in the instant case must necessarily consider the above principles to establish negligence and determine whether they amount to medical negligence whether civil or criminal.

20. From the record, it is seen that the patient was admitted with symptoms of Bradycardia and Dyspnoea, which involved both heart and lung issues. She was admitted and was seen by doctors of different specialities including Dr. Sharad Gupta who is specialized in cardiology. The Hospital is a multi-speciality hospital that includes treatment for diseases and illnesses across wide ranging medical conditions. As the patient was admitted with *Bradycardia* which involved a low heart rate of under 60 beats per minute (BPM) and *Dyspnoea* or shortness of breath involving distress in breathing which is generally due to asthma, pneumonia, cardiac ischemia, interstitial lung disease, congestive heart failure, chronic obstructive pulmonary disease or psychogenic causes, such as panic disorder and anxiety and the patient was a known case of Diabetes Mellitus Type II, Hypertension since 2011 and Coronary Artery Disease, the line of treatment in the hospital for the patient included treatment by a multi-disciplinary team of doctors which addressed all issues, including heart, lung and kidney problems. Renal issues were addressed through

examination by a urologist in view of low urine output. Dialysis was undertaken to address the problem of decreased urine due to shock. The medical records of the petitioner hospital indicate that the creatinine level had improved from 15ml/hr on 02.01.2015 to 40-50ml/hr on 03.01.2015 and 60-80ml/hr on 06.01.2015. From the record, it is also apparent that the patient left the hospital "against medical advice" and consulted other hospitals in Ludhiana and Gurgaon. As per records, treatment for the lung related issues, administering of oxygen had been commenced on through intubation on 01.01.2015. Thus, both kidney and lung issues were being addressed. The Respondent's contention that since the hospital did not diagnose the kidney and lung ailments of the patient, it was liable for medical negligence cannot therefore be sustained. There is no allegation that the doctor treating the patient committed any breach of the duty of care in treatment. The admission to the ICU in the absence of nephrologist and pulmonologist is the only allegation. The death of the patient occurred after 25 days of having left the Petitioner hospital. Details of treatment in the two hospitals consulted have not been brought on record.

21. As per the record, the cause of death was *Septicaemic Shock. Acute Respiratory Distress Syndrome. Multi Organ Dysfunction Syndrome. Acute Kidney Injury. Lower Respiratory Tract Infection (Cause HTN?) and Chronic Obstructive Pulmonary Disease.* It is not denied that the patient suffered from Diabetes Mellitus Type II, Hypertension since 2011 and Coronary Artery Disease. In such a case, bradycardia and dyspnoea due to the underlying diseases could not be ruled out. Merely because specialists from certain medical disciplines did not attend on the patient who was in the care of a multi-disciplinary team in the ICU, cannot be a ground to allege that there was medical negligence, especially since the record makes it evident that the medical issues were addressed through intubation for oxygen, dialysis and medication which revealed a downward trend of creatinine levels.

22. In light of the aforesaid reasons and discussion it is apparent that the patient/Respondent's late wife had been provided medical care as per the prescribed medical standards of care and protocol for patients in that medical condition. There was no breach of duty of care while she was admitted in the Appellant hospital by either the hospital or the attendant doctors who provided the reasonable standard of care expected in attending to the issues of heart, kidney and lungs through investigative tests and diagnostic means (blood tests, Xrays, CT scan, ECG and ECHO) and through interventions such as intubation, use of oxygen mask, dialysis and injections such as Lasix apart from the administering of antibiotics. The Respondent has not established through cogent evidence the basis for alleging deficiency in service in treating kidney and lung related issues in the appellant hospital. Its case for negligence in service has not been buttressed through any evidence of treatment in the other hospital she was taken to after a voluntary discharge was taken from the appellant hospital against medical advice. The onus of proving negligence has therefore not been discharged by the Respondent. In view of the clear position of law as per the **Bolam Test** and the principles laid down by the Hon'ble Supreme Court in ***Jacob Mathew*** (supra), no case of medical negligence and deficiency in service is made out by the respondents, much less a case of *res ipsa loquitur.* The finding of the State Commission that "*For not giving treatment to kidney and lungs problem, had deteriorated the condition of the patient, which ultimately led to her death. Therefore, we are of the considered opinion that there is medical negligence or deficiency in service on the part of OP for not giving the treatment to kidney and lungs problem of the patient which deteriorated the condition of the*

patient and ultimate death of the patient" is not based on a complete appreciation of the facts on record which include intubation for oxygen and dialysis. The State Commission has clearly fallen into error while adjudicating the issue and has failed to appreciate the settled position of law on medical negligence with regard to the line of treatment which is adopted unless it is contrary to the standard protocol or the standard of care required. As per record, the line of treatment indicates that these issues were addressed by the hospital. No records from the subsequent hospitals which were approached by the patient/her attendants (Respondent) indicates that there was any diagnosis relating to incorrect treatment or improper diagnosis with regard to these ailments by the petitioner hospital. The only allegation of the Respondent in this case was that there was no treatment provided for the lung and kidney related ailments to the patient in view of there not being any specialists in the hospital in this discipline. We are not convinced that there was any cogent basis to conclude medical negligence on part of the Appellant hospital.

23. The Appeal is, therefore, found to have merits and is accordingly allowed. The impugned order of the State Commission is set aside. However, there shall be no order as to costs.

24. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER