

BEFORE THE CONSUMER DISPUTES REDRESSAL  
COMMISSION GANDHINAGAR.

**Complaint No. 68 OF 2015.**

1. Lokendra Singh S/o.,  
(late) Dr. Narendra Singh,  
R/o. 20/21, Pratap Nagar,  
Udaipur,  
Rajsthan.

Complainant

VERSUS

1. Dr. Rupesh Mehta,  
R/o. 57, Brahman Mitra Mandal,  
Society Near Jalaram Temple,  
Paldi, Ahmedabad.
2. Managing Director,  
Apollo Hospital International Ltd.,  
Plot No. 1A, Bhat GIDC Estate,  
Gandhinagar.
3. Dr. Jay Kothari,  
Incharge of MIUC,  
Apollo Hospital International Ltd.,  
Plot no. 1A, Bhat GIDC Estate,  
Gandhinagar.
4. Dr. Sunil Chugh,  
Kalpana Nursing Home Pvt. Ltd.,  
2/4/C, Sardarpura, Udaipur.

Opponents

Coram: Hon'ble Mr. D. T. Soni, President  
Mr. Jigar P. Joshi, Member

Appearance: Mr. B. M. Rathod, L. A. for the complainant  
Mr. M. P. Vora, L.A. for the opp. no. 1  
Mr. Bhargav Pandya L. A. for the opp. no. 2  
Opp. no. 3 and 4 served but absent

**Per: Hon'ble Mr. D. T. Soni, President**

1. The distraught son of the deceased Dr. Narendra Singh has cried for justice by way of this complaint under Section 12 of the Consumer Protection Act, 1986 against the opponent's doctors seeking compensation of total Rs. 19,00,000/- (Rupees Nineteen Lakhs Only) with costs and interest alleging negligence on the part of the doctors.

 2. Factual matrix:

*Fact:*  
The complainant is the son of the deceased Dr. Narendra Singh who was 83 years suffering from a Tumor on the Pancreas and had also illness of diabetes as well. The complainant had earlier consulted opp. no. 4 Dr. Sunil Chugh of Kalpana Nursing Home and then after, complainant consulted opp. no. 1 Dr. Rupesh Mehta a known Gastroenterologist, contacted on phone, thereafter,

Dr. Rupesh Mehta decided to operate in Apollo Hospital. The medical check-up of complainant was also done, at the Hospital of Dr. Rupesh Mehta and sugar was also found 250 in the body of the complainant's father. The deceased himself a physician advised to be operated upon on 10/07/2006 at about 8:30 a.m., and he was taken into Operation Theater in Apollo Hospital which was approximately lasted upon 6:30 p.m. as alleged. The complainant realized that the deceased was unconscious but opp. no. 3 Dr. Jay Kothari, stated good condition of the deceased. The complainant alleged that after two hours of operation, complainant managed to go to ICU and saw that his father was sweating and BP was at 45 and there was no doctor or nurse. He contacted Dr. Rupesh Mehta on phone and got some injection which was injected directly on the body of complainant's father. The complainant found his father with convulsions and his hands and legs were tied to the bed, and on being asked to the doctor, the complainant was replied that medicines are reacting. On the next day of operation i.e. on 11/07/2006, the condition of the deceased started worsening and he was found on ventilator and was seen pale and complainant showed that the body of the deceased was still not moving. On 12/07/2007, the father of the complainant was declared dead and death certificate was given. Thus, complainant has charged the doctors with negligence and carelessness jointly and severally. A notice by registered to opponents dated 04/06/2007 was sent calling upon them to compensate for Rs. 50,00,000/- but it was not responded to.

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It is worthy to state that some history of the filing of this complaint. Earlier the complaint was filed at Consumer Forum, Udaipur District and the opponents had raised a plea about the jurisdiction and it was ruled in favour of the complainant. Thereafter, the opponents had filed a revision in Consumer Disputes Redressal Commission, Jaipur Rajasthan and Commission allowed the revision petition dated 23/12/2008 granting liberty to file at the concerned District Forum at Ahmedabad vide No. 224/2011 (Old No. 509/09). The complaint came to be rejected vide order dated 30/11/2011 being not maintainable and may be placed before the appropriate Forum. Therefore, this complaint is filed before this Gandhinagar Forum.

3. Mr. M. P. Vora, L.A. for the opp. no. 1 Dr. Rupesh Mehta, has filed detailed written version. Mr. Bhargav Pandya, L.A. for the opp. no. 2 has filed a pursis dated 23/01/2020 and the written statement filed by the opp. no. 1. Opp. no. 3 and 4 though served but remained absent. The main written statement is filed by Dr. Rupesh Mehta opp. no. 1, therefore, Mr. M. P. Vora, L.A. for the opp. no. 1 by way of filing this written statement has heavily resisted the claim by way of denying averments and statements made in complaint except specifically admitted by him. Negligence or any carelessness is also denied. It is denied that the deficiency in service has been meted out. In the written statement, to the credence of doctor, it is

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stated that Dr. Rupesh Mehta has a wide experience of 32 years as Gastroenterologist and had completed double F.R.C.S. from Edinburg and Glasgow (England) and he is working since 1989 in the surgical Gastroenterology. To his great credit, he has vast experience of Assistant Professor of surgical in V.S. Hospital. The doctor was also a Professor of Head of the Department of surgical from 1992 to 2006 and members of surgeons who are presently working in India can boast of vast dexterity. It is stated that for the first time on 01/07/2006 deceased Dr. Narendra Singh was examined by Dr. Rupesh Mehta, and was suffering from Cancer of Pancreas at the age of 83 years and he had also Hemiplegia before few years and was treated by Neurologist. He had also VPS (abnormal heart rhythm) for which cardiologist was consulted. Thus, considering the deceased old age of 83 years and he is weak by physical condition and forcibly risk factors in surgery was properly explained in detail to the patient and his family members also. It is stated that after lot of discussion and consideration, the deceased and his family members requested the doctor to operate upon at Apollo Hospital situated at Gandhinagar. The patient himself was a doctor and was confident that he will control Diabetes. The Hospital has also taken necessary corrective and precautionary measures and several tests before surgery.

4. It is further stated in written statement that Dr. Rupesh Mehta also made a team of senior doctors of Apollo Hospital, namely, no.



1 Dr. Ramesh Goyal, Diabetologist, no. 2 Dr. Sharad Jain, Cardiologist, no. 3 Dr. Rajesh Sheth, no. 4 Dr. Shravan Bohra, Gastroenterologist and no. 5 Dr. Harendra Thakker, Pulmonologist. After discussing with the aforesaid erudite doctors, the operation was performed. The consent of the patient as well as his relative was taken before operation on 09/07/2006. The deceased had also consulted Neurologist for Hemiplegia. The deceased was admitted on 09/06/2006 for all necessary requisite tests being done and Dr. Ramesh Goyal was also consulted for Diabetes. Hospital staff also kept close watch of blood sugar throughout the night and such level was kept under control. In the written statement there is clear mention of glycemic control. In this detailed written statement, it is stated that a variety of predisposing conditions in hyperglycemia have been reported orally including renal insufficiency, malnutrition, liver disease, sepsis, malignancy, dementia or other disorder. The reference of medical books of well known and renowned international authors have been made. The comment made by the complainant is also denied in para no. 3 of W.S. The doctor has also stated that there was a chance or probability of complications arising and which can also lead to death of the patient and post operative complications are known evil beyond the control of the surgeon and due to past long medical history of the patient, unfortunately he died, but doctors cannot be faulted with. It is stated that human body is a complicated organ and in spite of best possible care and caution simply because complication has occurred, it

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cannot attribute any negligence on a doctor and the doctors never give any guarantee or assurance to the patient or relative about the recovery at the age of 83 years, and to their best ability and skill, the patient was treated. It is also stated that the doctrine of "Res Ipsa Loquitur" (things speak automatically) would not be applicable in each and every case where patient dies. It is stated that for oblique motive, the complaint has been filed in order to extort money by making false and frivolous allegations against the doctor. Dr. Rupesh Mehta, has also filed affidavit to additional reply of the complainant. The documents appended with CC No. 224 of 2011 filed before Ahmedabad Rural are relied.

5. The complainant has filed rejoinder affidavit reiterating the facts stated in the complaint.

6. Mr. B. M. Rathod, L.A. for the complainant has vehemently submitted that this is a fit case wherein, looking to the factual matrix and pleadings with bulky documentary evidence, it is clear that though the deceased Dr. Narendra Singh was of 83 years with some illness, however, when he was admitted prior to the date of operation on 09/07/2006 in Apollo Hospital, the blood sugar was 250 mg and though on 10/07/2006, the day on which deceased was operated upon, the doctor did not wait and hurriedly took him in the operation theater though there was 217 mg blood sugar and it was the duty of the doctor to control it and the operation was done on

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10/07/2006, and 8 to 10 injections were given by Dr. Jay Kothari opp. no. 3. The deceased developed many complications because of the absence of care and heedfulness taken by the opponent's treating doctors. It is stated that after the operation on the next day, deceased died in ICU and was placed on ventilator that shows that the fault on the part of the doctor. It is submitted that in ICU when complainant went to see his father whose physical condition was worsening very rapidly but, he was not allowed to enter in ICU and was pushed off by the staff. It is stated that this is a sheer case of doctor's negligence and though Dr. Rupesh Mehta who is a known Gastroenterologist ought not to have advised for operation on 10/07/2006. It is submitted that because of the doctor's negligence that the mails were done by the complainant on 13/09/2006, 15/09/2006 and 24/09/2006 but was not responded to. It is submitted that notice by registered post of the Advocate was issued on 04/06/2007 stating the factual matrix as to how doctor has committed shown the negligence but no response was given. It is stated that on 12/07/2007, the complainant himself issued a notice to the opponents. It is submitted that though in the written statement, a penal of five doctors had been manifestly stated and submitted that this penal had checked up and got the consent of complainant but, there is no affidavit filed by any of the penal doctors.





7. Mr. Rathod, L.A. has submitted that no consent was taken of the deceased or his family members which is also a glaring example of doctor's negligence. Mr. Rathod, L.A. has also drawn attention to the pleadings made again in the rejoinder affidavit of the complainant which was recorded on 31/01/2018 wherein, it is clearly stated that blood sugar was 217 mg, and patient age was 83 years, hence, there was no urgency but, surgery was done doing away with the life of the healthy person. It is stated that the complainant was fully unconscious and laying on the stretcher and shifted to MICU and was not attended by any doctor or nurse and the worsening condition developed due to fall of BP to 45 due to doctor's negligence as there was no care of MICU. It is submitted that Dr. Rupesh Mehta assured them that he had a vast experience of such operations at Apollo Hospital and he assured that his father would be able to walk and go back to Udaipur. It is submitted that deceased himself was a doctor of first batch of SMS Medical Collage Jaipur with his MBBS, DA, MD (ANESTHESIA) degree and was practicing since 1950 and had a vast experience of nearly 50 years but his suggestions were clearly ignored by Dr. Rupesh Mehta who performed operation with his medical team. It is stated that when on the next day, the deceased started worsening his condition in ICU, Dr. Rupesh Mehta or any other doctor were not present. It is also submitted that the deceased was not suffering from Cancer which is evident from biopsy report dated 11/07/2006 and hemipegia had nothing to do with the present disease which was

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cured. It is submitted that false and alluring promises were given by the doctor for speedy recovery at the age of 83 years without waiting before operation. Mr. Rathod, L.A. further submitted that before operation on 10/07/2006 at about 8:00 a.m. the blood sugar was 217 mg and the complainant denied for operation till normalcy come to back but, Dr. Rupesh Mehta refused it and told that they will conduct the operation at high sugar level with over confidence. It is submitted that it was a planned surgery but, not an emergency operation and they operated the deceased as if the doctors wanted to do some experiment and VPC has nothing to do with the present case.

8. Mr. Rathod, L.A. has also strenuously submitted that the report of Dr. Y. C. Vora (former professor and head of anesthesia Udaipur) was very much supportive to the deceased and says that the higher sugar level, the operation should have been postponed vide Annexure-3. It is also submitted that because of the immense, eagerness and hurried attitude shown by Dr. Rupesh Mehta, without doing any biopsy, the major surgery was not needed at all but, Dr. Mehta and his team failed to appreciate with their skill and operated upon, therefore, operation on the next day, deceased died. Mr. Rathod, L.A. while his argument has also referred a chunk of documents and submitted that there is no note showing 217 mg blood sugar and in the such case papers. In a nutshell on account of the negligence shown by the opponent's doctor's team, after the

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operation deceased died at the age of 83 years, therefore, doctors required to be held liable, so far as, charges under the Consumer Act are concerned.

9. Mr. M. P. Vora, L.A. for the opp. no. 1 Dr. Rupesh Mehta has emphatically submitted that this is a fit case wherein, as per settled law, since the operation was successful at the age of 83 years and the deceased had many complications and illness of relating to his heart and neurology, on the next day, though the operation was successful but, because of the hidden and unknown complications many times took place which is happened in the present case. Therefore, no doctor can be blamed and it is also well settled law that merely because the patient dies after the operation, doctor cannot be blamed, it is made clear that on 03/11/2020 Dr. Rupesh Mehta who is undoubtedly a renowned surgeon of Gujarat in Gastroenterology with his great credential as stated in written statement had remained present and also explained this Court the defence of the opponent's doctors. Dr. Mehta has also submitted that before six years the deceased had suffered Paralysis and after nine days of his examining, he agreed for operation and operation was done on 10/07/2006 with great care and caution and ardent and assiduous team of the doctors known for their expertise was empanelled. Dr. Rupesh Mehta, also expounded personally by taking pains that the team of the doctor also explained that before operation a panel of specialist doctors of Apollo Hospital have

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checked the physical condition of the patient and Dr. Rupesh Mehta, also referred the five known doctors in the field of Diabetologist, Cardiologist, Anesthetist, Gastroenterologist and Pulmonologist also. It is also stated that the risk factor is always being explained to the patient and his family member's presence in the hospital. Dr. Rupesh Mehta also personally argued that the sugar was also control and operation started on 10/07/2006 with great care and circumspection. Dr. Mehta has also submitted that the deceased was operated upon with his consent and since the deceased himself being old doctor, he was explained the risk in his body at 83 years, so far as, operation is concerned because deceased had a heart and neuro illness and suffered also hemiplegia and was treated by neurologist and had abnormal rhythm.

10. Mr. M. P. Vora, L.A. has also vehemently argued and referred to the ground stated in written statement. Mr. M. P. Vora, L.A. has also relied upon the judgment reported in Jacob Mathew v/s Union of India : (2005) 6 SCC 1 wherein, Hon'ble Supreme Court has held "no sensible professional would intentionally commit an act or omissions which would result in harm or injury to the patient since the professional reputation of the professional would be at stake." Mr. Vora, L.A. has also submitted that in the present case, there was no fault on the part of the doctor much less any negligence or omissions and it is the duty of the complainant to prove that how the doctors have remained careless before or after operation. It is

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submitted that deceased had multi illness of heart, neurology, etc. and Dr. Rupesh Mehta, at the time of his argument, by dint of report has submitted that deceased was suffering from Cancer, therefore, doctor's team have not ventured any hazardous process but, have carefully operated upon the deceased, and merely after the operation on the next day deceased died and was found on ventilator that does not mean that there was a straw of any negligence of the doctor. Mr. Vora, L.A. has also referred to the case of Bolam v/s Friern Hospital Management Committee : (1957) 1 WLR 582 wherein, considering the seminal authority for determining the standard of care required for medical professionals, it was held that "in the case of a medical man negligence means failure to act in accordance with the standards of reasonably competent medical man at the time and that there may be one or more perfectly standards and if the medical men performs with one of those proper standards, he is not negligent". Mr. Vora, L.A. has submitted that no breach of duty can be caste upon or can be said to have been proved against Dr. Rupesh Mehta who has a plenty of his credentials being an illustrious gastroenterology surgeon in Gujarat and is widely acclaimed for his performance from Nation to International also.

11. Mr. Vora, L.A. has also submitted that it is also well settled law that even a wrong diagnosis is not negligence and the Court has to keep in mind the "ordinary skilled professional standard of care" expected from the doctor. It is submitted that the complainant has



totally failed to understand that where doctor has failed in his duty to take care or any breach of duty and consequential damage suffered by the complainant. Mr. Vora, L.A. submitted that complainant himself consented at the age of 83 years to be operated upon that fact itself says that after many required bodily tests, the penal of the doctor was form and only after the nod given by Dr. Rupesh Mehta, the operation was performed in the presence of a cluster of medical colleagues. Mr. Vora, L.A. has also submitted that Dr. Rupesh Mehta, to his medical acumen and with great dexterity after taking the various tests, thought it fit to operate the deceased, therefore, it cannot be said that the operation was not done at the drop of a hat, but after great deliberation with the colleagues doctors the operation was done. There are cases that after operation because of inscrutable or hidden aspects complications may develop for that doctor cannot be blamed, therefore, it can be said that Dr. Rupesh Mehta a prominent doctor has discharged his duty within the contours of medical protocol and rules and has not breached any duty as alleged by the complainant. Therefore, the allegations of the negligence are incurably, unwarranted, and aims at to extort money from Dr. Rupesh Mehta and his team, which cannot be endured by Court of Justice. At the time of hearing, Mr. Vora, L.A. has also showed various documents and also passed original documents and English translation copy where the son of the deceased has signed is placed with permission of this Court dated 09/12/2020 wherein, Mr. Vora, L.A. has tried to convince this

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Court that they have been fully explained about the decision which includes the death and they have conformed their decision.

12. In a nutshell, Mr. Vora, L.A. has submitted that the complainant has totally failed to show any negligence, carelessness or omissions on the part of the doctor which may warrant the action under the Act. In view of the aforesaid aspects, more particularly, the complaint itself is frivolous fault and aimed at tarnishing the reputation of the doctor at a stake and the feisty spirit showed by the doctor's team cannot be faulted with any carelessness, therefore, the complaint may be dismissed with heavy costs.

13. Having heard Mr. B. M. Rathod, L.A. for the complainant, Mr. M. P. Vora, L.A. for the opp. no. 1 Dr. Rupesh Mehta and Mr. Bhargav Pandya L. A. for the opp. no. 2 hospital with pleadings and a chunk of documentary evidence, it appears that bone of contention has arisen from the fact that the deceased himself was a doctor and at the age of 83 years, being an octogenarian preferred to be operated upon in Apollo Hospital at Gandhinagar at the behest of a known gastroenterologist, Dr. Rupesh Mehta, who is arraigned as opponent no. 1 and most of the charges and allegations are hinted at Dr. Rupesh Mehta. After necessary and requisite physical tests, since the deceased had a history of various illnesses with the Cancer, the doctors examined the deceased firstly with a doyen team of Dr. Rupesh Mehta as stated in para 2.4 of written statement

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naming a panel of special doctors of Apollo Hospital in the field of Diabetologist, Cardiologist, Anesthetist, Gastroenterologist and Pulmonologist. All doctors to their best ability discussed about the risk factors involved in the precautionary measures before such surgery. It cannot be denied that operation was done on 10/07/2006 and after the operation, because of unknown complications at the age of 83 years and history of illness, the deceased was put on ventilator on 11/07/2006 and died next day. In such poignant situation after consulting the various field of the doctors, Dr. Rupesh Mehta, in his usual dexterity and expertise though it fit to operate deceased Narendra Singh who earlier also met Dr. Rupesh Mehta and after sometime he again came for the operation. A chunk of documents with reports have been placed in record. It cannot be denied that death in such circumstances is always inscrutable. Before we examined point of negligence contended by the complainant hurling allegations mainly aimed at Dr. Rupesh Mehta, it is admittedly clear that after the operation on the next day i.e. 11/07/2006, the deceased breathed his last. The bone of contention has arisen from the fact that after operation at the age of 83 years, the deceased died. In the arguments of Mr. B. M. Rathod, L.A., some doubts have been created stating that on 10/07/2006, there was a blood sugar of 217 mg and doctor did not wait and ignored this point. There is no denial that deceased was on ventilator found by the complainant and the complainant has also stated that he saw in the ICU that his father's legs and hands were tied to the bed and

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since complainant was pushed up from ICU, by staff and he also showed that his father was in a very critical situation, therefore, he has doubted the negligence on the part of the doctor.

14. In the present case, Dr. Rupesh Mehta has also stated that sugar was control and deceased had VCP i.e. heart abnormal rhythm and was suffering from Cancer of Pancreas and before six years he also suffered attack of Paralysis, therefore, deceased had history of multiple illnesses. It is right that no doctor from the team, present at the time of operation had filed affidavit but, on the ground on non filing of the affidavit, doctors cannot be faulted with. It hardly needs to say that Mr. Bhargav Pandya, L.A. for Apollo Hospital has remained present and has shown his pursis, fairly saying that he has adopted all averments and grounds stated in written statement by Dr. Rupesh Mehta and Mr. Pandya, L.A. has also brought to our kind notice that only operation was done in the hospital of op. no. 2 i.e. Apollo Hospital International Ltd. at Gandhinagar. In the present case, opp. no. 3 Dr. Jay Kothari and opp. no. 4 Dr. Sunil Chugh have remained undefended, however, we have carefully read the grounds and averments stated in the petition as well as in the lengthy written statement prepared and produced by Dr. Rupesh Mehta who is compelled to mainly combat this legal fight before this Commission.



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15. At the time of hearing, Dr. Rupesh Mehta has also remained present and also brought to our notice that at every two hours, the sugar was controled and merely there was a report that blood sugar was 217 mg that does not mean that operation ought not to have been done. It is up to the doctor's discretion as to whether operation to be done or not in such circumstances stated in the present case. We Consumer Forum must restrain our self to add or implant our own opinion on the operation. Since the expert body of doctor's knowing for their expertise as at the behest of Dr. Rupesh Mehta heeded properly in operation process, we cannot say that at what level of blood sugar operation should be done. We, the Commission are not expert in medical science but the manner in which after keeping the presence of various erudite experts in the vivid field as stated earlier, the doyen team of doctors had remained present in the operation theater at the request of Dr. Rupesh Mehta and at the threshold, we have seen that the bone of contention has been arisen by the complainant on the ground that after the operation, deceased died on the next day. In every death after the operation doctor should not be made target or victim, however, as per settled law it is the duty of the complainant to prove by ample and cogent evidence much less documentary evidence that doctor has shown carelessness in such treatment. Deceased patient had hemiplegia before few years and was being treated by neurologist and deceased was also suffering from VPC (heart abnormal rhythm) for which he was put on beta loc by cardiologist as stated

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in the written statement. The reference of strict control of blood sugar is also stated in detail, in the written statement which we have perused.

16. It hardly needs to state that the negligence in medical science is a failure to act in accordance with the standards of reasonably competent medical man and it has to be explained as to how doctor has failed in his duty to take care or any breach of his duty and consequential damage suffered by the complainant, therefore, the liability of the doctor's is based on "ordinary professional standard" as laid down in Bolam's case.

17. At the time of hearing, we have referred to the leading authority on these aspects to which a short list is made as follows :

- (1) (1957) 1 WLR 582 : Bolam vs. Friern Hospital
- (2) AIR (1969) SC 128 : Laxman Balkrishna Joshi (Dr.) vs. T. B. Godbole
- (3) (2009) 3 SCC (1) : Martin F. D'souza vs. Mohd. Ishfaq
- (4) (2005) 6 SCC 1 : Jacob Mathew vs. State of Punjab
- (5) (1998) 4 SCC 39 : Spring Meadows Hospital & Anor. vs. Harjot Ahluwalia (Dt. : 25/03/1998) with C.A. No. 7858/1997.)
- (6) 2017 SCC Online NCDRC 1189 : Dr. M. Kochar Senior Consultant & Obs. & Gynae, Sir Gangaram Hospital New Delhi vs. Ispita Seal Leisure Valley App. Society.

- (7) (2009) 6 SCC 1 : Nizam Institute of Medi. Sciences vs. Prasanth S. Dhananka
- (8) Nihar Kaur vs. Post Graduate Institute of Medi. Sci. & Research
- (9) (1995) 6 SCC 651 : Indian Medi. Asso. vs. Indian Medi. Asso. vs. V. P. Santha
- (10) (1998) 2 CPJ 3 (NC) Consumer Protection Council vs. Dr. M. Sundaram
- (11) 2014 (3) CLT 43 : Tarun Garg vs. Dr. R. K. Gupta

18. In the present case, there is no denial that Dr. Rupesh Mehta has performed the operation with the presence of opp. no. 3 and 4 and a panel of expert doctors, in the various fields which was required at the time of operation since the charge is mainly leveled against Dr. Rupesh Mehta. We have made a glance at the credential and creditworthiness of Dr. Rupesh Mehta and enshrined in the written statement and at the time of hearing, Dr. Rupesh Mehta also told us that he has great and vast experience in the field of surgical gastroenterology and the experience of 34 years in the city Ahmedabad and still works ardently in his coveted field. It is beyond the pale of controversy that operation was done by mainly Dr. Rupesh Mehta with the help of the expert doctor's presence. Dr. Mehta had also worked in VS Hospital and delivered thousands of lectures in his field as Assistant Professor of surgery from 1977 till long time. He had been a Professor of Head of the Department of surgical gastroenterology from 1992 to 2006. We

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have also taken care to see that many times as per our experience, if at the time of operation or after the operation, the patient dies then there is uproar in the mind of the relative who sometimes takes the doctor to a task and blame the doctor with carelessness.

19. Dr. Rupesh Mehta has also stated on affidavit wherein, it is stated that deceased Narendra Singh of Udaipur, first time came to Dr. Mehta on 01/07/2006 and he was suffering from Cancer of Pancreas. He had also history of Hemiplegia before few years and was treated by Neurologist and had also abnormal heart rhythm for which cardiologist treated him actually. Considering the age of the patient being 83 years old, an octogenarian and at the relevant point of time, his weak physical condition and possible risk factors behind that kind of major surgery was properly expounded in detail to the patient and the family members. Dr. Rupesh Mehta was not oblivious of the fact that there is a history of Diabetes i.e. the patient was suffering from diabetes. Therefore, all options were discussed with the patient as well as his family members even an offer was made to operate him in the hospital of Dr. Rupesh Mehta also. Till then he was also advised to control his Diabetes. It hardly needs to see that the patient was a senior doctor, therefore, Dr. Rupesh Mehta was also of the considered opinion that the patient being a senior doctor himself, having treated hundreds of cases, will control his Diabetes with the help of physician before the date of operation. After a lot of discussion he agreed and consent was

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obtained and was operated upon in such hard situation in the Apollo Hospital at Gandhinagar. A copy of the concerned form dated 09/07/2006 signed by the patient and present complainant is also annexed and marked as Annexure-A in the record. Thus, it is clear that at the whopping age of 83 years, the patient agreed to be operated upon after much discussion and deliberation in terms of medical science expounded by Dr. Rupesh Mehta before operation. Even during the operation, the blood sugar was measured regularly and patient was given continuously injection Actrapid Insulin and was closely monitored by doctors.

20. We have not found such evidence that patient was forcibly taken in Operation Theater against his will or consent. To allege a doctor with negligence has become very simple and routine thing when the case fails before or after operation. We have experience that there are instances that patient dies because of inscrutable circumstances even on a stretcher before operation, then in such situation, doctors are miserably made a victim of wrath by the patient and doctors or medical men are dragged into legal battle for extorting money by the relatives of the deceased or an injured, which is an irony.

21. It is not worthy to state at this juncture, while summing up our conclusion that we have seen that the duty to take care in medical process is in the present case, we have seen that the duty to take



care in medical professional is very important and referring to the historic judgment in great detail in United Kingdom, the issue of medical negligence was much discussed in the case of Bolam v/s Friern Hospital Management Committee : (1957) 1 WLR 582 wherein, considering the seminal authority for determining the standard of care required for medical professionals, it was held that "in the case of a medical man negligence means failure to act in accordance with the standards of reasonably competent medical man at the time and that there may be one or more perfectly standards and if the medical men performs with one of those proper standards, he is not negligent". Hence, the Courts there opined that a doctor is not guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men. Here we failed to understand that where doctor has failed in his duty to take care or any breach of his duty and consequential damage suffered by the complainant. Thus, liability of the doctor is based on "ordinary professional standard" as laid down in Bolam's case. In the present case, complainant has failed to prove that there was a breach of the duty of care in any treatment or administration of the treatment. It is also well settled that even a wrong diagnosis is not negligence and the Court has to keep in mind the "ordinary skilled professional standard of care" expected from the doctor. We have also referred the judgment reported in Jacob Mathew v/s Union of India : (2005) 6 SCC 1 wherein, Hon'ble Supreme Court has held "no sensible professional would





intentionally commit an act or omissions which would result in harm or injury to the patient since the professional reputation of the professional would be at stake." In the present case, we have not seen that there was any fault on the part of the doctor which is proved by the complainant or any breach of the duty on the part of the doctors to take care of the present complainant. Therefore, Dr. Rupesh Mehta and other opponents required to be relieved of such imputation made in this complaint having failed to prove by the complainant in our earnest finding.

22. In the result, it requires to be held that complainant has failed to prove any negligence or carelessness on the part of the opponents doctors, therefore, we hope by this judgment that the trauma and harassment being felt by the doctor since the pendency of this complaint, will definitely relieve the doctors from such situation. In fact, we venture to hold that there was no negligence as alleged on the part of the doctors, therefore, the imputation of negligence against three opponents doctors fails. Though, our sympathy maybe with the complainant but such misplaced sympathy cannot take place of the proof in legal battle. Hence, this complaint requires to be dismissed with costs by passing the following final order.



**ORDER**

- (i) This complaint stands dismissed with costs quantified Rs. 2,000/- (Rupees Two Thousand Only). The costs to be deposited in this Commission within 10 (Ten) days from today.
- (ii) Copy of the judgment be given to the parties free of charge.

Pronounced in the open Court on this 20<sup>th</sup> January, 2021.

(Jigar P. Joshi)  
Member

(D. T. Soni)  
President  
CDRC,  
Gandhinagar.