NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 933 OF 2015

(Against the Order dated 29/10/2015 in Complaint No. 269/2001 of the State Commission Maharashtra)

1. SURLATA HOSPITAL & ANR.
SAHAYOG SOCIETY, LADY JAMSHEDJI ROAD, MAHIM
MUMBAI-400016
MAHARASHTRA
2. DR. SHARAD GOGATE
SURLATA HOSPITAL, SAHAYOG SOCIETY, LADY JAMSHEDJI ROAD, MAHIM,
MUMBAI-4000016

.....Appellant(s)

Versus

1. SARASHEEJ SAHEBRAO SHATE & 2 ORS.
R/O. AT A/B, GURUPUSHYAMRIT SOCIETY, GAVANPADA,
MULUND(E),
MUMBAI-400081
2. KUMARI SHRIKA SARASHEEJ SHETE
MINOR, THROUGH HER NEXT FRIEND FATHER, COMPLAINANT NO. 1, R/O. AT A/B, GURUPUSHYAMRIT SOCIETY, GAVANPADA,
MULUND (E)
MUMBAI-400081
3. DR. PRAKASH MAHADEO AMBARDEKAR
ANESTHESIA, R/O. A/17, RAMKTIR, 133-B, LADY JAMSHEDJI ROAD, MAHIM,
MUMBAI-400016

.....Respondent(s)

BEFORE:
HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Appellant : Appeared at the time of arguments through Video Conferencing
For the Appellants : Mr. Shekhar B. Prabhavalkar, Advocate with Dr. Sharad Gogate, Appellant - 2

For the Respondent : Appeared at the time of arguments through Video Conferencing
For the Respondents : Mr. Ganesh Shirke, Advocate

Dated : 21 Jun 2022

ORDER

Pronounced on: 21st June 2022

ORDER

DR. S. M. KANTIKAR, MEMBER

1. The instant Appeal is preferred by the Appellants under Section 19(a) of the Consumer Protection Act, 1986 (for short 'the Act') against the impugned Order dated 29.10.2015, passed by the Maharashtra State Consumer Disputes Redressal Commission (hereinafter referred to as the 'State Commission'), wherein the Complaint was allowed and the Appellant was directed to pay compensation of Rs. 20,00,000/- with interest at 9% p.a., failing which the interest will be 12% p.a. and the Appellant was also directed to pay Rs.25,000/- as costs.

2. For the convenience, the Parties are being referred to, in the instant Appeal, as the position held in Consumer Complaint before the State Commission. Brief facts that the Complainant Sarasheej Sahebrao Shate (hereinafter referred to as the 'Complainant No. 1') took his wife Sunita (hereinafter referred to as the 'patient') for second delivery to Surlata Hospital (hereinafter referred to as the 'Opposite Party No. 1') of Dr. Sharad Gogate (hereinafter referred to as the Opposite Party No. 2) at Mahim, Mumbai. The Complainants alleged that the patient was enrolled on 13.06.2000 during pregnancy. She regularly visited the Opposite Party No. 1 for ante-natal check-up (ANC). It was alleged that the Opposite Party No. 2 advised that the child in the womb was overweight and may require caesarean section and the delivery would be on 01.10.2000. On 21.09.2000, the patient experienced unusual pain in abdomen and immediately she was admitted to the Opposite Party No. 1 Hospital. Though the patient was getting labour pains, the Opposite Party No. 2 did not pay proper attention to perform caesarean section, but he left the patient to the care of nurses and '*Aayas*' and was told to wait for normal delivery. On the next date i.e. 22.09.2000, the patient was shifted to delivery room, accompanied by one '*aaya'* only and without a doctor. At about 4.30pm, the patient started vomiting and her condition got deteriorated. The '*aaya'* was requested to call the doctor but to no avail. She told there was no need to call the doctor. It was alleged that though Dr. Gogate was staying on the second floor of the same building, he refused to come down, saying that the delivery would be normal. At his usual time, he came at 6.30pm but till then the patient became critical and had suffered irreparable loss. At 7.30pm, to help Dr. Gogate, two doctors namely Dr. Sunil Gokhale - the Physician (Opposite Party No. 3) and Dr. Prakash Ambardekar – the Anaesthetist (Opposite Party No. 4) came to the hospital but the patient had her last breath. However, the Opposite Parties kept on telling that they were trying their level best. At about 8.00pm, Dr. Gogate informed the Complainant that the patient and the baby in the womb had passed away. Being aggrieved, the Complainant No. 1 filed a police complaint against the treating doctor for the alleged negligence, causing death of his wife and baby. Also, filed a Consumer Complaint against the Opposite Parties in the State Commission for the alleged medical negligence vis-à-vis deficiency in service and sought compensation of Rs. 20 lakh with interest @ 15% per annum.

3. The **Opposite Parties Nos. 1 and 2** filed their written statement and denied any negligence during the patient care. The Opposite Party No. 2, Dr. Sharad Gogate submitted that he is a practicing gynecologist for 28 years and performed more than 5500 successful deliveries. His hospital had adequate nursing care with qualified nurses and '*aayas' / 'bais'*. The patient's family was known to him and previously she took the treatment from his hospital. The Complainants suppressed various facts. The Complaint is false and frivolous without any merit.

4. He further submitted that on 21.09.2000, the patient came to the Hospital around 10.00 pm with slight pain in abdomen and backache. On examination, she was not in active labour, therefore he advised to monitor her throughout the night and review in the morning. On the next day morning at 7.00 a.m. and 10.00 a.m., the Opposite Party No. 2 checked the patient and informed the Complainant No. 1 that the patient could be discharged as her due date for delivery was 02.10.2000. However, the Complainant requested Opposite Party No. 2 to try for increasing the labour pains, as they were residing at Mulund, it's far off from the hospital. On such clear instructions, the Opposite Party No. 2 gave tablet Primiprost one hourly to increase her labour pains. The nursing staff was instructed to monitor the labour and observe the partograph for the condition of baby. As a standard dose, the patient was given six tablets from 10.00 am to 3.00 pm. The Opposite Party No. 2 at 3.30 pm examined her and found that she was not getting any pains, therefore, Artificial Rupture of Membrane (ARM) was performed and started IV glucose with Pitocin to increase her pain. He also informed the patient and her relatives that the medication may cause vomiting and nothing to worry. Thereafter, the Opposite Party No. 2 went to his residence on 2nd floor. At about 5.45 pm, the Opposite Party No. 2 examined the patient,

found her progressing with labour pain and informed the Complainant about expected delivery within ½ to 1 hour. After 10 minutes, at about 5.55pm, the patient suddenly developed convulsions. Immediately, resuscitation steps were started including head low position, suction of throat & nose, 100% oxygen through bag & mask, injection Diazepam 2cc IV, injection Effcorlin 2 cc IV. The Opposite Party No. 2 gave artificial respiration by bag and mask as well as external cardiac massage. Patient was given injection Atropine, intra cardiac injection of Adrenaline. Endotracheal intubation was done, started IV Dopamine drip; administered Injection Sodabicarb 50 cc, but there was no improvement in the condition of the patient. In the meantime, the anaesthetist Dr. Sunil Gokhale (Opposite Party No. 3) and the physician Dr. Prakash Ambardekar (Opposite Party No. 4) were called. Both joined for intensive resuscitation. At the same time, the Opposite Party No. 2 told the patient's husband and other relatives about the patient's critical condition. The intra cardiac injection of Adrenaline, IV aminophylline and Lasix were repeated. The Opposite Party No. 2 further stated that the patient had no previous history of fits and did not have any heart or respiratory problem. During the ANC period, she never had high blood pressure or urine albumin or swelling of the body. The onset of sudden convulsions, fall of blood pressure and breathlessness during labour pains indicated to the possibility of Amniotic fluid embolism (AFE) which was likely cause of her sudden cardio-respiratory failure. Despite intensive efforts from all three doctors along with their nursing staff, the condition of patient deteriorated and she expired at 7.50 pm.

5. Dr. Sunil Gokhale (Opposite Party No. 3) expired during proceedings; therefore the State Commission, vide its Order dated 29.10.2014, deleted the name of the Opposite Party No. 3 from array of the parties. The Opposite Party No. 3 - Dr. Sunil Gokhale, in his reply, submitted that on 22.09.2000, at around 6.20 pm, he received an urgent message from one of the nurses from Surlata Hospital for the medical emergency and he immediately reached at Surlata Hospital at around 6.45 pm and rushed to the labour room. He saw Dr. Sharad Gogate and his staff giving external cardiac massage, along with artificial ventilation through endotracheal tube and Ambu bag. The Opposite Party No. 3 joined them to revive the patient and gave intensive medical treatment. He further submitted that in response to Dr. Sharad Gogate's urgent call, Dr. Prakash Ambardekar, the Anaesthetist rushed into the labour room at around 7.15 pm and joined to resuscitate the patient. Initially, there was some response to resuscitative measures but later on failed.

6. The Opposite Party No. 4 - Dr. Prakash Ambardekar, in his written version, submitted that he is a visiting Anaesthesiologist since 1986 to Surlata Hospital for routine and emergency anaesthesia cases. He received an emergency call at 6.30 pm and rushed to Surlata Hospital at about 7.15 pm and joined the CPR team. In spite of the best efforts of the entire medical team, the patient failed to recover and expired at 7.50 pm.

7. On the basis of averments and evidence, the State Commission partly allowed the Complaint with cost of Rs. 25000/- against the Appellants and directed the Appellants (Opposite Parties Nos. 1 & 2) to pay Rs.20,00,000/- with interest @ 9% per annum within 60 days from the date of filing the Complaint.

8. Being aggrieved, the Opposite Parties filed this First Appeal.

9. Heard the arguments from learned Counsel for the Parties. They reiterated their evidence as adduced before the State Commission. We have perused the material on record and the Medical Record *inter alia* two Post Mortem Reports, few literature on AFE, cardiac tamponade etc.

10. The sequence of events, at Suralata Hospital revealed that the patient was admitted on 22.09.2000 at 7.00 pm. It was 34 weeks' pregnancy. The Opposite Party No. 2 examined the patient and for induction of labour tablet Primiprost was advised and waited for the progress of labour. The patient was monitored by the nursing staff for BP, FHS and dilatation of cervical Os. The Opposite Party No. 2 examined the patient at 5.45 pm, who suffered generalised convulsions. Emergency medicines were given and CPR was started. In the meantime, the Opposite Parties Nos. 3 and 4 joined for emergency CPR, but the patient could not survive. The body was sent for PM at KEM Hospital.

11. The State Commission held the Opposite Parties liable by putting the entire reliance on the report of Dr. M. D. Gupta. Now, to decide the instant Appeal, we have to see whether the cause of death was Cardiac Tamponade or AFE and secondly whether there was deficiency / failure to treat the medical emergency to hold the Opposite Parties liable for medical negligence.

12. Adverting to the cause of death of the patient, two experts' affidavits are on record. The Complainant presented expert testimony that the patient died due to Cardiac Tamponade and Pulmonary embolism, whereas the Opposite Parties presented expert testimony of Dr. Harish M. Pathak that death was from an amniotic fluid embolism ("AFE"), an unpredictable "obstetrical catastrophe" befalling a pregnant woman. Therefore, let us go through both the opinions.

13. **Dr. M. D. Gupta** performed the PM of the patient's dead body and based on the PM findings and medical records, he filed an affidavit dated 16.02.2015. The relevant paragraphs are reproduced as below:

> *"3.* I say that thereafter, I received a letter from Senior Police Inspector of Mahim Police Station for my opinion on Post Mortem Report. Thereafter, I gave my opinion under No. FM/251/2001 dated 4th January, 2001. In the said opinion letter, I have clearly mentioned as to On Post Mortem Examination
>
> *Externally – There was clear cut signs of Asphyxia (Photographs attached as an Exhibits)*
>
> *Internally – Lungs was showing pulmonary edema and there was cardiac tamponade*
>
> *Histopathologically – there was no signs of Amniotic fluid embolism.*
>
> *Considering all these facts it appears that there was gross carelessness (willful negligence) on the part of the doctor in taking care of the patient.*
>
> *As far as whose life (Mother/Child could have been saved) If proper measures would have been taken atleast one of either's life could have been saved."*

14. Dr. Harish M. Pathak, the Prof. & Head of Dept. of Forensic Medicine & Toxicology at Seth GS Medical College and KEM Hospital, Mumbai, filed an affidavit dated 5.8.2015. The relevant paragraphs are reproduced as below:

> *8. Dr. M. D. Gupta has not done residency post in Obstetrics and Gynaecology. He does not possess post-graduate degree or diploma in Obstetrics and Gynaecology. From his affidavit it is clear that he has merely studied the said subjects but has no practical experience in the said field. Considering the said position the observations made by him in his note as well as affidavit like "Wilful Gross Negligence" in managing a Labour Patient who developed rare and almost invariably fatal complication of labour by a senior and experienced Obstetrician like Dr. Gogate. From his note and affidavit it appears that the aforementioned observation appears to have been made by him to somehow support the case of the complainant. In other words the findings recording by Dr. M.D. Gupta in his letter dated 4th January 2001 and Affidavit dated 16th February 2015 are factually incorrect findings for the following reasons:*
>
> *a) the post mortem findings of asphyxia on external and internal examination are also seen in Amniotic Fluid Embolism.*
>
> *b) Histopathology examination report shows autolytic changes in all tissues, under such circumstances histology cannot be conclusive either way.*
>
> *c) Presence of 150 cc of clotted blood was caused by intra-cardiac injection of drugs as part of last efforts at cardio-respiratory resuscitation. There was no way this could have been caused by the management of labour in this case.*
>
> *d) As per the reference from Harrison's Book of Internal Medicine, more than 150-200 cc of fluid/blood is required for causing cardiac tamponade. Annexed hereto and marked as Annexure A is a copy of the relevant pages from Harrison's Book of Internal Medicine.*

15. However, the State Commission rejected the opinions of both the expert and held in paragraph 18 of its Order that:

> *"Expert evidence adduced by the Complainant of Dr. Manoj D. Gupta, Department of Forensic Medicines supported by affidavit and that of Opponent of Dr. Harish M. Pathak are contradictory and do not having bearing of relevance for deciding the question of facts regarding the negligence of OP No. 2 resulting in the death of patient may be in their opinion due to different cause."*

16. On careful perusal, we found both the opinions are conflicting with each. Therefore, to resolve the controversy, vide our Order dated 16.04.2016, we sought another opinion from the expert Medical Board from AIIMS. The relevant paragraphs of the said opinion from AIIMS dated 02.02.2017 are reproduced as below:

> ***"The Histopathological report provided to the medical Board was examined and was found to be inconclusive as the tissues showed autolysis. However, the gross findings are compatible with Pulmonary edema.***
>
> ***The Medical Board is of the opinion that Cardiac Tamponade stated as the cause of death by the Autopsy Surgeon was infact misinterpretation of cardiac resuscitation.***
>
> ***The cause of death could be asphyxia due to seizures. Seizures in peripartum period can lead to sudden death and can have multiple causes such as electrolyte imbalance, Amniotic Fluid Embolism, Epilepsy, pregnancy Induced Hypertension etc. and may not be predictable. There is no evidence of willful negligence as stated by the autopsy surgeon."***

17. On 08.12.2017, the learned Counsel for the Appellant filed the copy of judgment of the Court of Session for Greater Bombay Criminal Appeal No. 430/2016, wherein the Criminal Appeal was allowed and the Appellant (Dr. Sharad Gogate) was acquitted from the offence under Section 304(A) of the IPC. It is pertinent to note that the proceedings before the Criminal Court are separate and distinct one. It has no bearing on the proceeding under the Consumer Protection Act, 1986.

Discussion:

18. The physician - Dr. Gokhale (since deceased) and Dr. Ambardekar (Opposite Party No. 4) opined that the cause of death was AFE.

19. Considering the entirety, in our view, the State Commission has wrongly put entire reliance on the evidence of Dr. M. D. Gupta. On careful perusal of PM findings, we note that Dr. M. D. Gupta mentioned weight of lungs, left lung 300 gms and right lung 500 gm and cut surface showed edematus fluid oozing out. As per the standard Forensic Medicine text book, the weight of lung was normal. If there is pulmonary oedema, the weight should be still on higher side. Moreover, he described findings of heart as puncture marks of needle on the heart and blood infiltration in the pericardial wall, approximately 150 ml of clotted blood. In our view, it was resuscitation artefact but not a Cardiac Tamponade. It is known that administration of intra-cardiac Adrenaline injection during CPR, will not cause such collection of blood (about 150 ml)[1]. Moreover, the patient had no history of hypertension or any cardiac disease or uraemia which may cause cardiac tamponade. Dr. M. D. Gupta gave the cause of death as *"*respiratory failure due to pulmonary edema was cardiac tamponade".

20. The opinion of Dr. M. D. Gupta is not acceptable because he was not an expert in Obstetrics &/or Gynaecology to comment on AFE. It is surprising to note that he had directly concluded that it was due to gross carelessness (willful negligence) of the Opposite Party No. 2. It should be borne in mind that the duty of forensic expert is to perform post-mortem to find out / arrive to cause of death. The PM findings are helpful to

the Courts/Tribunals, while deciding the cases. He has no duty to judge or make any comment on the alleged negligence. We further note that the PM reporting was not as per standards though the weight of lungs was normal but he stated that it was pulmonary edema. Secondly, without taking actual measurement of blood volume, 'approximately 150 ml' appears a vague and it cannot be taken as a gospel truth. It appears that the PM report was prepared based on the history, clinical notes. Moreover, the patient had no history of hypertension or uremia or trauma to cause cardiac tamponade.

21. We took reference from book on **Forensic Medicine and Toxicology** by Mr. Anil Aggrawal (APC Publication) to know about weight of organs, the Cardiac Tamponade and pulmonary edema. It discussed about the normal lung weight as LL 325 to 480g (Average 375g) and RL 360 to 570g (Average 450g). It also mentioned that '**Artefact**' is any change caused or feature introduced in a body after death (accidental or physiologically unrelated finding to the natural state of the body), that is likely to lead to misinterpretation of medico-legally significant ante-mortem findings. Artefact is a structure or substance not normally present but produced by some external agency or action. Misinterpretation may lead to wrong cause and manner of death and miscarriage of justice. The responsibility of autopsy pathologist is very great. Often the doctor is the chief source of evidence upon which legal decisions are made, and the freedom or imprisonment, or the life or death of any accused person depends on his evidence. Therefore, the doctor should learn to draw conclusions logically and correctly, instead of forming hasty judgement. The autopsy pathologist should be able to distinguish them from the significant ante-mortem changes. Further, if the doctor misinterprets the artefacts, he will have a tough time in the Court during cross-examination, for a lawyer, aware of these pitfalls, may attempt to discredit his evidence. In the instant case the pericardial blood/clots were one of the **Resuscitation Artefacts**[2] i.e. the injection marks of resuscitation are usually found in the cardiac region or on the extremities. In intra-cardiac injection, heart may show contusion and blood may collect in the pericardium. Some of the injection marks may be associated with postmortem bruises.

22. We have gone through the medical literature on Amniotic fluid embolism. AFE is an unpredictable, arises from the entry of amniotic fluid into the maternal circulation. In fact, it usually occurs during labor and delivery or in the postpartum period, but it can also happen with amniocentesis, abortion, abdominal trauma, removal of placenta, cervical suture removal and ruptured uterus or intrapartum amnio infusion. Risk factors for the development of AFE are advanced maternal age, multiparity, male fetuses, and trauma. There is also a strong association of AFE with caesarean delivery, placenta previa, eclampsia, placental abruption, polyhydramnios, dilatation and curettage, and renal disease. AFE is a diagnostically challenging type of pulmonary embolism that occurs when amniotic fluid enters maternal circulation during delivery or postpartum. This obstetric complication is very rare but characterized by high mortality rate. The main symptoms are dyspnea, cardiovascular collapse, disseminated intravascular coagulation (DIC) and even sudden cardiac death. The Society of Maternal Fetal Medicine (SMFM) and the Amniotic Fluid Embolism Foundation[3] have recently proposed four diagnostic criteria for amniotic fluid embolism (AFE): presence of (1) sudden cardiac arrest or both respiratory and hemodynamic collapse, and (2) biological disseminated intravascular coagulopathy (DIC), and (3) absence of fever, and (4) clinical onset during labor or within 30 min of delivery. Amniotic fluid embolism is still a diagnosis of exclusion, although the scientific knowledge in this field is increasing. The initial signs and symptoms which may lead one to suspect an AFE instance are non-specific. They include: abrupt cardiac and respiratory failure dyspnea altered consciousness restlessness Cyanosis seizures and uterine atony. Such pathology still entails significant morbidity and mortality rates and permanent brain damage for those patients who survive.

The pulmonary edema is also one of the sign of AFE and its mortality rate is up to 60% to 80%. The chart filed by the Opposite Party to shows the Clinical Presentation in AFE and Cardiac Tamponade compared with the patient's findings. It is reproduced as below:

Column No.1	Column No.2	Column No.3
Amniotic Fluid Embolism (patient in labour pains)	Cardiac Tamponade	Sunita Shete (Patient in labour pains)

Hypotension	Pulsus paradoxus	Hypotension
Cyanosis	Jugular vein; prominent, y,x descent	Cyanosis
Dysponoea	Third heart sound	Dysponoea
Seizures (Convulsions)	Pericardial fluid volum of >20 ml	Seizures
Adult respiratory distress		Adult respiratory distress
Cardio pulmonary arrest		Cardio pulmonary arrest
Cerebral, Oedema pulmonary		Cerebral, pulmonary oedema (PM Findings)

Thus, AFE is an unfortunate condition that was not within the control of any doctor to anticipate or prevent. This condition was the root cause of the pulmonary edema that led to hypoxic encephalopathy, brain damage.

23. In our view, any judgment as to the liability must be centered on the quality and speed of any diagnostic and therapeutic response when facing a potential AFE case. AFE is hard to diagnose with certainty. The Hon'ble Supreme Court in **Kusum Sharma & ors V Batra Hospital & Med Research Centre**[4] held that the breach of expected duty of care from the doctor, if not rendered appropriately, it would amount to negligence. It was observed that:

> **if a doctor does not adopt proper procedure in treating his patient and does not exhibit the reasonable skill, he can be held liable for medical negligence.**

24. In the instant case, the standard of care was identified from immediate resuscitation steps taken by the Opposite Parties like external cardiac massage, artificial respiration and administration of oxygen to the patient. We do not find any lapse to breach in duty of care from the Opposite party No.2.

25. It is pertinent to note that the **AIIMS Board report** dated 02.02.2017 stated that gross findings are compatible with pulmonary edema. However, it clearly mentioned that Cardiac Tamponade stated as the cause of death by the Autopsy Surgeon was **infact misinterpretation of cardiac resuscitation**. The cause of death could be asphyxia due to seizures. Seizures in peripartum period can lead to sudden death and can have multiple causes such as electrolyte imbalance, Amniotic Fluid Embolism, Epilepsy, Pregnancy Induced Hypertension etc. and may not be predictable. There is no evidence of wilful negligence as stated by the autopsy surgeon. Therefore, on combined reading of all three expert opinions, in our view, it was the case of AFE and not cardiac tamponade. The HPE report provided to the Medical Board was examined and was found to be inconclusive as the tissues showed autolysis. The AIIMS report further stated that the cause of death could be asphyxia due to seizures. Seizures in peripartum period can lead to sudden death and can have multiple causes such as electrolyte imbalance, Amniotic Fluid Embolism, Epilepsy, Pregnancy Induced Hypertension etc. and may not be predictable. The report concluded that ‘there is no evidence of wilful negligence as stated by the autopsy surgeon’.

26. We would like to rely upon the judgment of the Hon’ble Supreme Court in **Dr. Harish Kumar Khurana v. Joginder Singh and Others**[5], held that the hospital and doctors are required to exercise sufficient care in

treating the patients in all circumstances. However, in an unfortunate case, death may occur. It will be necessary that sufficient material on medical evidence should be available before the adjudicating authority to arrive at the conclusion that the death is due to medical negligence. Even death of a patient cannot, on the face of it, be considered to be the medical negligence.

27. Recently, in another judgment, in the case **Dr(Mrs) Chandarani Akhouri & Ors V Dr.M.A.Methusethupathi & Ors**[6]**,** it was held in para (27) that;

> 27. It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

28. Based on the discussion above, respectfully relying upon the judgments of Hon'ble Supreme Court and considering the facts of the instant case with the clear opinion of board of experts from AIIMS, it is difficult to hold the Opposite Party No. 2 liable for medical negligence. There was no breach in duty of care from the Opposite Party No. 2 to handle emergency arisen due to fatal AFE.

29. In the result, the instant Appeal is allowed and the Order of the State Commission is set aside. Consequently, the Complaint is dismissed.

There shall be no orders as to costs.

---

[1] Harrison's Book of Int. Medicine

[2] Forensic Medicine and Toxicology by Mr. Anil Aggrawal (APC Publication)

[3] J Gynecol Obstet Hum Reprod . 2020 Nov;49(9)

[4] (2010) 3 SCC 480

[5] (2021) 10 SCC 291

[6] 2022 LiveLaw (SC) 391

.....J
R.K. AGRAWAL
PRESIDENT

.....
DR. S.M. KANTIKAR
MEMBER