NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 22 OF 2010

1. DR. DEEPAK KUMAR SATSANGI & ANR.

S/o Late sh. Charan Prakash Satsangi, R/o B-87 Pilkhan Estate, Sector - Alpha - I, Greater Noida

Gautam Budh Nagar

U.P.

2. Mrs. Poonam Satsangi

W/o. Dr. Deepak Kumar Satsangi, R/o. B-87, Pilkhan East, Sector - Alpha - I, Greater Noida,

Gautam Budha Nagar

U.P. .....Complainant(s)

Versus

1. SANJEEVAN MEDICAL RESEARCH CENTRE (P) LTD. & ORS.

Through its Director, Dr. Prem Aggarwal, 24, Ansari Road, Darya Ganj

New Delhi - 110 002

2. DR. PREM AGGARWAL

Consultant Doctor Sanjeevan Medical Research Centre (P) Ltd., 24, Ansari Raod, Darya Ganj

New Delhi - 110 002

3. DR. ANUPAM AGGARWAL

R.M.O. Sanjeevan Medical Research Centre (P) Ltd., 24, Ansari Road, Darya Ganj

New Delhi - 110 002

4. DR. NUSARAT

Working as Doctor in Sanjeevan Medical Research Centre (P) Ltd., 24, Ansari Road, Darya Ganj

New Delhi - 110 002 .....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE AJIT BHARIHOKE, PRESIDING MEMBER
HON'BLE MRS. REKHA GUPTA, MEMBER

For the Complainant : Complainants – IN PERSON
along
With Mr Pranay Ranjan, Advocate
Mr S D Singh, Advocate

For the Opp.Party : Dr Sushil Kumar Gupta, Advocate for
OP nos. 1, 2 & 4 along with
Dr Prem Agarwal – IN PERSON – OP 2
Mr Gaurav Bhargava, Advocate for
OP 3

Dated : 01 Apr 2016

ORDER

REKHA GUPTA

The facts relevant for the disposal of the present consumer complaint as per the complainants are that for the last two-three days the elder son of the complainant - Rahul had contracted a common cold and was having running nose and moderate grade fever. The complainant no. 2 got worried and suspected that her son might be suffering from pneumonia and accordingly complained to her husband about her suspicion. To rule out pneumonia, complainant no. 1 asked her to have Rahul's chest x-ray and blood tests done.

2. On 24.10.2009, complainant no. 1 was required to attend a medical seminar/ conference at Chandigarh and he left for Chandigarh in the morning. Since the son of the complainants Rahul had some small health problems of coughing, fatigue and fever, while complainant no. 1 was leaving his home for Chandigarh complainant no. 2, expressed her desire to consult a physician. However, complainant no. 1 being a doctor himself was sure enough that there was nothing to worry about the illness of Rahul as the symptoms were only of common cold and fever, but just for the satisfaction of his wife he instructed her that till he got back home to take the help of Shri Amrit Chawla, who is their family friend, for getting the chest x-ray and other blood tests of Rahul done, just to rule out the possibility of pneumonia and, if necessary, to consult a physician. Accordingly, complainant no. 2 called Shri Amrit Chawla upon which he asked her to come to Sanjeevan Medical Research Centre (P) Ltd., 24, Ansari Road, Daryaganj as the Hospital was near to his place.

3. On 24.10.2009 in the noon, complainant no. 2 and Shri Amrit Chawla along with Rahul went to the hospital and an OPD card was prepared. In the OPD the son of the complainant was examined by Dr Anupam and the chest x-ray and blood for tests was taken. Upon receiving the chest x-ray Dr Anupam represented to the complainant no. 2 that Rahul is suffering from (Consolidation) pneumonia and insisted for immediately admitting Rahul in the hospital. In the presence of Shri Amrit Chawla complainant no. 2 requested Dr Anupam to telephonically apprise her husband, i.e., complainant no. 1, who himself was also a doctor, about the illness of Rahul. In the telephonic discussion Dr Anupam also informed to the complainant no. 1 that his son was suffering from severe pneumonia (Consolidation). Complainant no. 1 categorically warned him that his son Rahul had previously had a severe reaction with the antibiotics like Cephalaxin and Ciprobid and cautioned him that any highly sophisticated medicines were not advisable to be administered to the adolescent or person suffering from Duchenne Muscular Dystrophy (DMD).

Hence, only in unavoidable circumstances should any sophisticated antibiotic be prescribed and also clearly instructed him that before administering of any such medicine upon his son proper sensitivity test, under the strict supervision of qualified doctor must be undertaken.

3. Out of greed Dr Anupam was adamant to admit the patient, knowing very well that indeed there was no requirement for hospitalisation of Rahul, as the chest x-ray was clear and there was no consolidation (pneumonia). As such on persuasion of Dr Anupam at 12.35 p m Rahul was admitted in the hospital and his admission was also informed to the Consultant Doctor, Dr Prem Aggarwal. The consent form for admission was signed by Shri Amit Chawla and also at that point of time he was served with the estimated bill of the hospital expenses for Rs.3,200/-.

4. After Rahul's admission in the hospital at 1.00 p m he was shifted to ward. Dr Anupam who was handling the case of the complainants' son, deliberately ignored and overlooked the precautions and every request of complainant no. 1 and for the reasons best known to him and prescribed such group of medicines against which he was categorically warned.

5. Rahul's chest x-ray report of the Radiologist, Dr Nidhi Bhatnagar and the Haematology and Bio-chemistry reports of blood test conducted by Dr Sangeeta Agarwal DNB (Path) had also confirmed that there was no possibility of Rahul's suffering from pneumonia. However, these reports were not shown to the complainant no. 2 or Shri Amrit Chawla who were present with the patient at the time of admission of the patient to the hospital.

6. The conduct of the opposite parties would explicitly reveal the gross professional negligence as well as deficiency in medical service committed by them, i.e., at 1.00 p m after instructing the nurse to start IV antibiotics, Dr Anupam left the patient under the observations and mercy of the nurse and one Unani Medicine Doctor namely Dr Nusarat who is only BUMS qualified. Thereafter the nurse on duty handed over the list of medicines to Shri Amrit Chawla and asked him to quickly bring the medicines from the shop which was in the vicinity of the hospital.

7. Around 1.30 p m I V Azithromycin 500 mgs was injected intravenously to the patient in bolus (single dose) form. Immediately after its administration IV Levofloxacin 100 mgs was also intravenously injected into the patient. Soon after its injection the patient complained of restlessness. The noting at 1.45 p m in the hospital's record also reveals that upon administration of Azithromycin, Levofloxacin was injected and patient complained of restlessness then SR (ICU) was called.

8. Around 02.00 p m the complainant no. 2 was asked by the hospital staff to deposit the money as the condition of the patient had become critical and he was required to be shifted to ICU. Complainant no. 2 was not carrying so much money as for simple chest x-ray and blood tests she did not expect that any big amount would be required. Complainant no. 2 requested Shri Amrit Chawla to immediately arrange about Rs.20,000/- which was required for the hospital and medicine expenses. Thereafter Shri Amrit Chawla was engaged in arranging the money and for the said purpose he left the complainant no. 2 alone in the hospital. The condition of the patient started deteriorating fast. Observing the critical condition of her son complainant no. 2, who was alone, got nervous and started crying and requesting Dr Nusarat to call Dr Anupam or some senior doctor to control the condition of her son and also to immediately shift the patient to ICU without waiting for the deposit of money, which will be deposited as soon as Mr Amrit is back. Dr Nusarat roughly spoke to the complainant no. 2 to keep quiet and not to create panic in the hospital. Further saying that meanwhile she was taking care of the patient, as she is a

well-qualified and a competent doctor to control any adverse situation and at that stage the condition of the patient was not beyond her control so there was no need for disturbing Dr Anupam, as he has not come back from home. Complainant no. 2 was helpless but to surrender her son's life in the hands of Dr Nusarat.

9. Soon after, within a few minutes, sensing the serious and critical condition of her son, the complainant no. 2 became nervous and started running from pillar to post crying for the doctors in the hospital for nearly half an hour. At last she was able to find Dr Dinesh Mathur, who rushed to the patient and seeing the boy unconscious and pulseless and blue, asked the hospital staff for the life-saving drugs but no such drug was available in the ward. Then he asked them to immediately shift the patient to the ICU which is on the first floor of the hospital.

10. As complainant no. 1 was away his wife was struggling hard to save the precious life of her dear son. In the meantime she informed Dr Satsangi, her husband telephonically, that his son had become unconscious, pulseless and blue. Upon receiving the said information, complainant no. 1 made a telephonic request to Dr M Khaliullah, a prominent Cardiologist, to rush to the Sanjeevan Hospital to save his child. Dr M Khaliullah very kindly rushed to the hospital in a bid to save the child of the complainant. Dr Dinesh Mathur and Dr M Khaliullah tried cardiopulmonary resuscitation and temporary pacemaker but the patient could not be revived as it was too late.

11. The patient's bed head ticket sheets/ record of the hospital itself explains that at 03.00 p m the staff nurse gave call to the SR (ICU) that the patient was having chills and rigors, which are sufficient to show that the patient had collapsed on account of drug reaction.

12. The hospital records also reveal that the patient was shifted to ICU at 03.10 p m and by that time patient was having cardio-respiratory arrest as such all the subsequent efforts recorded in the hospital record were just eye wash. Thus record of the hospital also substantiates that due to reaction of the medicine the patient had died before bringing to the ICU.

13. On 24.10.2009 at 05.30 pm the death certificate of the patient was issued by the hospital, and on the same day his dead body was dropped by the hospital ambulance at the complainant's residence.

14. Apart from the aforementioned events that occurred in the respondent hospital another most immoral, indecent, inhuman, disgraceful and shameful act was committed by the staff of the respondent hospital. Two diamond and stone studded gold rings were removed and stolen from the fingers of the deceased son. Upon noting the missing of the said rings at the time of performing funeral rites, the complainant no. 1 on the next day informed OP no. 2 about this misdeed committed by his staff. Then to show his generosity and to put curtains upon the reputation of his hospital, on 26.10.2009, he lodged a complaint in this regard to the SHO Daryaganj police station. Thereafter only one gold ring was returned back by one of the staff of the hospital but there was no trace of the second gold ring.

15. Complainant no. 1 requested the opposite parties for the patient's medical records/documents, in order to examine the medical treatment given to his son and the cause of his death. The opposite parties avoided providing the documents and after several reminders belatedly on 04.12.2009 reluctantly provided the papers to the complainant. The perusal of the papers would show that the respondents had manipulated the documents in order to pull curtains on their misdeed. In any case, the documents created or interpolated by the opposite parties were

an afterthought strategy to save themselves for the guilty acts done by them. However, the medical documents , even manipulated by them, were sufficient to show that the son of the complainant was not suffering from any ailment which required urgent hospitalisation. The opposite party doctor also callously prescribed the dangerous medicines and administered the said medicines without any sensitivity test which caused drugs reaction to the patient consequently the complainant's son died. Therefore, it is more than clear that the reaction to the unwarranted medicines was cause of death. Complainant no. 1, being himself a doctor, thoroughly studied and arrived at the conclusion that there was no requirement of admission and further there was no need to prescribe and administer such highly sophisticated antibiotic medicines, particularly IV Levofloxacin 100 mgs., and IV Azithromycin 500 mgs., which caused death of their son. The aforesaid medicines were given contrary to the instructions of the complainant. Therefore, the aforesaid persons were aware that their act would be sufficient to cause the death of the patient. The aforesaid persons have manipulated the documents. They have also misrepresented and cheated the complainant and his wife, therefore, it is more than clear that the complainants have been duped in addition to causing the death of his son.

16. Being aggrieved by the aforesaid malpractice of the medical service/ profession, misrepresentation, gross negligence and deficiency in service committed by the respondents, the complainants have filed complaint for notional punitive compensations on the following amongst other grounds:

17. In the present case the facts and circumstances of the case speak for themselves that for the greedy motive the respondents have swallowed the precious life of the patient by misrepresenting that he is suffering from pneumonia, which was palpably false, for the purpose to get the patient hospitalised and further for the motive to earn hefty money by making the case of the patient critical the opposite party intentionally prescribed and administered highly dangerous I V medicines even after precaution of the complainant no. 1 for avoiding dangerous medicines.

18. Dr Anupam, who was holding OPD, in the bid of greed and dishonesty, without any justification arrived from the chest x-ray result falsely represented to the complainant no. 2 that there is consolidation in the lungs and also telephonically informed to the complainant no. 1 that according to the x-ray his son is suffering from pneumonia (consolidation) and persuaded the complainants to get their child admitted immediately in the hospital. There was no need of such admission even then said doctor clearly misrepresented and took undue advantage of the absence of complainant no. 1 and created a situation for hospitalisation of their deceased son. It has come to the knowledge of the complainant that this is a regular practice in this hospital to make unnecessary admission in order to earn and earn hefty money from the general patient.

19. Dr Anupam knowing that the patient had suffered muscular Dystrophy and as such his immunity power was poor and even after he was categorically warned about his allergies to highly sophisticated antibiotics, e.g., cephalexin and ciprobid and etc., callously prescribed unwarranted expensive intravenous medicines. Before administering the highly sophisticated I V medicines upon the patient no sensitivity test was performed. Dr Anupam, even having the knowledge that the patient did not require any dangerous sophisticated medicines, in view of the chest x-ray report submitted by radiologist which clearly suggested that the chest of the patient was clear and the infusion of such high power dangerous antibiotics in the body of physically weak patient intravenously would lead to haemorrhage and collapse, prescribed the medicines, namely; I V Azithromum 500 mgs and I V Levofloxacin 100 mgs.

20. To the utter surprise of the complainants the respondent doctor had given the sophisticated medicines to their son without being undertaken any sensitivity test as assured by Dr Anupam. Moreover, the entire staffs including the doctor, sisters and nurses who were available to the patient did not have any knowledge as to how these tests should have been conducted. Dr Anupam directed to give medicines namely; I V Azithromycin; I V Levofloxacin and I V Ranitidine without application of mind and knowledge that wrongful injection of these medicines without proper tests and in a wrong manner would prove to be fatal for the patient. Further, he then unscrupulously left him in the hands of unqualified persons and at the mercy of god. Accordingly, due to the administration of the said unwarranted and sophisticated I V medicines in bolus (single dose) form the son of the complainants collapsed as he got serious reaction.

21. There was no emergency tray containing life-saving drugs such as Cortisones, Adrenaline, Noradrenaline, available in the ward.

22. Besides gross medical negligence and deficiency in service the opposite parties are also liable for the punishments for committing criminal offences as constituted under the Indian Penal Code for culpable homicide amounting to murder, misrepresentation for gaining money, i.e., cheating, breach of trust, theft and etc. The complainant no.1 on 18.12.2009 has lodged a complaint in this regard to the police station Daryagang, New Delhi. However, till date no FIR has been registered by the said police, as it has come to the knowledge of the complainants that the opposite parties are influential persons of their locality as such they are having clout over the local police of their area.

23. The complainant no. 1 has also made a complaint on 17.12.2009 regarding the abuse of noble medical profession, gross professional misconduct and medical negligence committed by the respondents before the Medical Council of India (MCI) for giving its opinion about the medical negligence committed by them. The MCI having taken cognizance of the matter vide no. MCI 211 (2) (644)/2009 – Ethics dated 06.01.2010 referred the matter for enquiry and necessary actions to the Delhi Medical Council as the opposite parties are within its jurisdiction.

24. The complainants prayed that the Hon'ble Commission may be pleased to:

> (a) Call for the relevant records of opposite party no.1 and direct the opposite parties, jointly and severally, to pay the complainants damages to the tune of Rs. Ten Crore along with interest on the said amount @ 18% per annum from the date of filing of the complaint till the date of its final payment.

25. In their reply on behalf of all the opposite parties have stated that Opposite party no. 2 is the Director of the opposite party no. 1 Hospital, wherein on 24.10.2009 at around noon, Rahul Satsangi aged 20 years, was brought as a suspected case of Pneumonia. The patient was attended to by opposite party no. 3, i.e., Dr Anupam Jena and accordingly X ray and blood tests were duly conducted. It was pertinent to mention here that Dr Anupam has done MD in medicines from PGI, Chandigarh.

26. Mr Rahul Satsangi was suffering from Duchenne Muscular Dystrophy (DMD) which is characterised by rapid progression of muscle degeneration eventually leading to loss of ambulation and death. The disease occurs in one in 4000 males and is caused by mutation of the dystrophin gene located in human x chromosome. The symptoms in this disease usually appears

before the age of 5 and sometimes are visible in early infancy and the patient develops proximal muscle weakness in the legs, pelvis and associated with the loss of muscle mass and eventually the disease spreads to the arms, neck and other area as the disease progresses. There is wastage of the muscle tissue and the same is replaced by fatty and fibrotic tissue. In the usual case by the age of 10 braces are required to aid in walking and most patients are wheelchair bound by the age of 12. Later symptoms include having abnormal bone development. Progressive deteriorating of muscle loss leads to loss of movement leading to paralysis. The average life expectancy for the patient affected by DMD varies from late teens to early or mid-twenties. There is no cure for the disease. Stem cell treatment is recently being used as an emergent treatment but primarily aimed at only controlling the symptoms or to maximise the quality of life.

27. The patient was in the terminal stage of disease and had taken unknown number of Stem Cell therapy, which is a terminal care for efforts of regeneration of heart muscles, the pump capacity of the heart was less than twenty percent (20%). The patient was 20 years old and was wheel chair bound, unable to move himself on his own.

28. The patient was referred to the opposite party no. 1 hospital with the history of cough with expectoration for the last 12-13 days with presence of muco-purulent sputum and with history of intermittent fever of low grade for the last 2-3 days.

29. The complainant no.1 knew the importance of respiratory infection and of developing pneumonia in a Duchenne Muscular Dystrophic patient and its fatal consequences and had directed his wife to rush the patient to Sanjeevan Hospital for an urgent x-ray and intravenous antibiotics.

30. The complainants are residents of B – 87, Pilkhan State, Sector Alpha 1, Greater Noida which is at a distance of 40 km away from the opposite party no. 1, hospital. The complainant had referred the patient to Sanjeevan Hospital in order to avail the facility for free treatment from the hospital as it is the policy of the hospital to treat doctors' families free of cost. The complainant got his child admitted in the opposite party no. 1, hospital. Thus, the allegations that the son of the complainant was treated for the purpose of earning money or with greedy motive is totally unfounded, ill-conceived baseless and has been made with motivated purpose so as to extort money from the opposite parties.

32. The patient was attended at the casualty by Dr Anupam. He is a qualified and experienced physician. Dr Anupam, i.e., opposite party no. 3 had a detailed discussion with the complainant no. 1 about the patient's disease and the importance of respiratory infection and also discussed with him the line of treatment. Dr Satsangi had also discussed, with opposite party no. 3 as the complainant himself was extremely worried about the condition of his son and the same could have led to severe heart failure and sudden death and thus he wanted his son to be admitted and given the treatment as advised by him (complainant). The complainant further informed that the patient was allergy to Penicillin and Cephalosporin and recommended that he should be given Azithromycin and Levofloxacin which would be safe for his son. Azithromycin and Levofloxacin antibiotics are the drugs of choice for patients who are allergic to other drugs. The testing of the drugs/ antibiotics other than penicillins are not authenticated by sub-cutaneous testing hence the other routes of testing like intravenous are preferred over sub-cutaneous testing for drug sensitivity.

33. After conducting the x-ray and finding presence of crepts in the infra axially and infra scapular region and presence of opacity in the left lower zone of the chest, the patient was admitted in the hospital and was prescribed inj. Azee and inj. Livoflox anitbiotics after test doses. After giving the test does of inj. Livoflox, the patient started having chills and rigor and he was immediately attended to and was shifted to ICU. CPR was initiated. Patient was intubated. Senior Cardiologist Dr M Khalilullah arrived and temporary pacing was also done which showed full capture but there was complete electro mechanical disassociation of the diseased heart. CPR was continued for more than 2 hours with consultation of Dr Khalilullah. The same was stopped at 05.30 pm and the patient was declared dead. The deceased body was transferred in the hospital ambulance to the patient's house in Greater Noida.

34. No post mortem was done to know the exact cause of death by the complainant purposefully and knowingly otherwise it would have revealed that true facts and circumstances with regard to the diseased condition of the heart of the patient.

35. On 17.12.2009 the petitioner filed a complaint to Medical Council of India against the opposite parties along with the complainant before the SHO, PS Darya Ganj, New Delhi on 19.12.2009.

36. On 06.01.2010 the Medical Council of India forwarded the complaint of the petitioner to Delhi Medical Council for appropriate action under clause 8 (4) of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002.

37. On 14.01.2010, the Deputy Commissioner of Police (DCP) forwarded the complainant dated 19.12.2009 to the Director, Health Services (DHS), Government of NCT, Delhi in the light of the judgment of the Hon'ble Supreme Court in Jacob Mathew vs State of Punjab (2005 6 SCC 1) and Martin F D' Souza vs Mohd Ishfaq (2009 3 SCC 1).

38. On 29.01.2010 the complainant preferred a complaint no. 22 of 2010 before the National Consumer Disputes Redressal Commission at New Delhi, claiming compensation of Rs.10 crore with 18% interest from the date of filing of complaint.

39. On 17.02.2010 the Medical Committee requested by the DCP Central District constituting three doctors under the Chairmanship of Director Health Services gave an opinion/ report to the effect that the treatment and the management given to the patient on 24.10.2009 was appropriate and prima facie there was no gross rashness/ negligence/ omission involved in the treatment/ management of the patient. Thus, FIR was not registered in the case.

40. On 25.02.2010 the complainants preferred a private criminal complaint before the learned Magistrate being number as CC No. 4791 of 2010 for offences under Sections 420, 468, 471, 380, 304, 120 B/ 34 IPC.

41. The Delhi police informed the complainant about the opinion/ report of the DHS medical committee.

42. The complainant filed an application under section 156 (3) Cr PC in the already pending complaint CC No. 4791 of 2010.

43. Learned Magistrate acting under Section 153 (3) Cr P C in CC no. 4791 of 2010 and vide order directed Director AIIMS to set up a committee to ascertain Medical Negligence in terms of the guidelines enumerated in Martin F D'Souza case and submit report by 13.08.2010.

44. The complainants filed Crl M C No. 2358 of 2010 before the High Court, New Delhi for quashing of the cognizance order dated 04.06.2010 passed by the learned Magistrate, the High Court issued notice in the matter and stayed the criminal proceedings in the matter.

45. The National Commission in Consumer Complaint no. 22 of 2010 filed on 29.01.2010 ordered and directed the Director AIIMS to constitute a medical Board of Directors to Prima facie opine about the alleged medical negligence on the part of the opposite parties treating the patient by 12.10.2010.

46. The Medical Superintendent by a letter intimated the National Commission that a Medical Board has already been constituted vide order of learned Magistrate dated 04.06.2010 but the same has been suspended vide order of the High Court of Delhi dated 26.07.2010 as part of the stay proceedings in Crl MC no. 2358 of 2010. A clarification was also sought regarding reconvening of the Medical Board.

47. Thereafter on 30.09.2010 the National Commission issued the order directing the Director, AIIMS to constitute a multi-disciplinary Board of Directors to opine prime facie about the alleged negligence on the part of the complainants and submit the report within three weeks.

48. On 26.10.2010 the Medical Board at AIIMS constituted under the direction of the National Commission comprising of seven expert doctors gave its report in compliance of the order of the National Commission stating clearly that there is no evidence to suggest that there was any gross negligence on the part of the complainant.

49. The complainant appeared personally before the Medical Board and made all averments made in the complaint including the intravenous administration and testing of the drug.

50. The Medical Board constituted by AIIMs consisting of 7 doctors of experts in the field of medicines and after going through the records of the case and hearing the complainant, the Medical Board concluded as under:

51. Late Mr Rahul Satsangi was suffering from Duchenne Muscular Dystrophy (DMD).

* No documented medical evidence in the form of previous medical reports especially echo-cardiography report, past medical reports, etc., was available to the Board Members to know about the pre-morbid cardio-respiratory status of late Mr Rahul Satsangi as according to the complainant Dr D K Satsangi, they have lost during the course of shifting of their house.

* The x-ray chest of late Mr Rahul Satsangi is indicative of a patch of opacity and after clinical correlation with case presentation, the presenting condition of Mr Rahul Satsangi warranted treatment on the lines of pneumonitis.

* Cardiac involvement was known to occur in patient with Duchenne's muscular dystrophy. The literature does not suggest that Levofloxacin and Azithromycin are

contraindicated in such cases. These drugs can be administered to such patients under controlled conditions following due precautions.

* Though medical records and nursing notes do not clearly indicate that Azithromycin was given as an infusion, however, the time mentioned for Azithromycin and next drug administration suggest that it could have been over of a period of 30 minutes.

* The records also suggest that patient had an acute worsening with shivering and cardio respiratory arrest after the test dose of Levofloxacin.

* The sequence of events suggest that the patient had cardio respiratory arrest which could have been due to an arrhythemia or drug reaction following which the patient was shifted to ICU where cardio respiratory resuscitation was carried out. However, the patient could not be revived and died in the ICU.

52. On 03.11.2010 Delhi Medical Council vide its report held that Dr Anupam Jena, i.e., OP no. 3 failed to exercise reasonable degree of knowledge which was expected of an ordinary prudent doctor by prescribing administration of test dose of antibiotics, viz., azithromycin and levofloxacin intravenously contrary to standard protocols and especially in a patient with a known history of drug allergy and according directing removal of the name of Dr Jena from State Medical Register of Delhi Medical Council for a period of one month. Medical Council of India had referred the complaint to Delhi Medical Council under clause 8 (4) of the India Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Delhi Medical Council was to conduct an enquiry under section 21 of the Delhi Medical Council Act, 2000 to find out whether there was any misconduct committed by the treating physicians as per the provisions of Act. The Disciplinary Committee as provided under section 21 of the said Act consists of:

(i) Eminent public men nominated by the Government;

(ii) One lawyer

(iii) One MLA

(iv) One Doctor nominated by the Council

(v) President of the Delhi Medical Association;

(vi) One expert member

The Delhi Medical Council in its report has not made it clear as to how Dr Anupam Jena had committed misconduct or which provision was attracted against him for giving a finding of misconduct and in the absence of the same, no disciplinary action could have been taken by them as he had not violated any of the provisions where misconduct has been defined. Further, Medical Negligence does not form the part of the misconduct as defined under section 7 of the Medical Council Act, 1956 or under Section 21 of the Delhi Medical Council Act, 2000. Further, there was just one medical expert on the board of Delhi Medical Council of Disciplinary Committee and the same finding was unjustified as the same was not based taking in view the latest developments in

the field of Medical Sciences hence the same had been challenged before the Medical Council of India by way of an appeal and the decision in the case was still pending.

53. As per the literature, intravenous mode of drug test dosing can be done. As per the position paper issued by ENDA: European Network for Drug Allergy and EAACI: European Academy of Allergy and Clinical Immunology on the topic of Diagnosis of Drug Hypersensitivity reactions, it has been mentioned that test dosing can be done through intravenous route. The contents of the literature are reproduced herein for the sake of convenience:

> *"The different routes of administration of test dose include oral, parenteral (IV, IM, SC) and topical (nasal), bronchial, conjunctival, cutaneous etc., application of the test substance. Although the drug should in principle be administered in the same way as it is therapeutically administered".*

54. The observation of DMC that I/V test dosing was contrary to standard protocols was also incorrect and arbitrary. As per the guidelines issued by the US Department of Health and Human Sciences and Joint Task Force on practice parameters of the American Academy of Allergy, Asthma and Immunology, Joint Council of Allergy, Asthma and Immunology there are no standard and validated methods for test of drug allergy of non-Beta Lactam Antibiotics. The said guidelines are reproduced herein for the sake of convenience:-

> *"Summary Statement 110: There are no validated diagnostic tests for evaluation of IgE mediated allergy to non-beta lactam antibiotics. Evaluation of possible allergy to these antibiotics should be limited to situations when treatment with the drug is anticipated (rather than electively as for penicillin).*
>
> *Summary Statement 111: Skin testing with non-irritating concentrations of non-beta lactam antibiotics is not standardized. A negative skin test result does not rule out the possibility of an immediate type allergy. A positive skin test results suggests the presence of drug specific IgE antibodies, but the predictive value is unknown".*

55. The drugs which are given by I/V infusion (like I/V iron, I/V amphotericin) can be tested I/V as these antibiotics are also given by infusion they can be tested I/V.

56. The Delhi Medical Council in its order has also expressed that all other allegations made by the complainant – Dr Satsangi do not constitute any negligence as also expressed by other two boards.

57. The two independent Boards, constituted by Government of NCT of Delhi and by the AIIMs had also accepted the intravenous route of drug testing as appropriate which is in accordance with the guidelines and position papers published by international societies.

58. On 11.02.2011 the Delhi High Court vide its order of date allowed the Crl M C No. 2358 of 2010 and quashed the complaint filed against the petitioners. While deciding the said petition in paragraph 6 of the judgment the High Court observed as follows:-

> *"I have gone through the order of the Medical Council and the same is silent about the opinions given by the other Boards and has not discussed these opinions at all. The order also does not show as to who, on behalf of the Delhi Medical Council considered the*

issues of Medical Negligence of Dr Anupam. In any case, Delhi Medical Council has given its own reasons which are contradictory to the reasons given by the other two Boards".

Further in paragraph 9 of the said judgment the court has held as under:-

"In the present case, two Boards independent of each other; one of AIIMS and other of Directorate of Health Services have given clean chit to the petitioners. In view of the opinion of two expert bodies exonerating Dr Anupam for gross negligence and in view of the Supreme Court holding that court cannot be an expert in such cases and the opinion regarding medical negligence given by an independent Board shall have more credibility, I consider that no useful purpose shall be served in proceeding against the petitioners".

59. In their written statement the allegations have been denied as under:

* The contents of paragraph 1 (1) are baseless, wrong and hence denied. It was wrong and specifically denied that the son Rahul Satsangi of the complainant had been killed on account of the malpractice and ill-motive of the opposite parties. It was also specifically denied that the opposite parties have misinformed the complainant no. 1 and misrepresented the complainant no. 2 that the patient was suffering from pneumonia. It was specifically denied that the opposite party no. 3 persuaded the complainants for immediate hospitalisation and medication. It was also specifically denied that the opposite parties had committed the gross medical negligence by prescribing the highly dangerous sophisticated IV medicines in bolus form. It was also specifically denied that the opposite parties had prescribed the antibiotics which the patient was allergic to. It was also specifically denied that prior information about the previous history of the patient with regard to the suffering of reaction from ciprobid was communicated on telephone by the complainant no. 1 to Dr Anupam. It was also specifically denied that despite the categorical instructions of complainant no. 1, opposite party no. 3, prescribed such highly dangerous sophisticated medicines. It was also specifically denied that the opposite party no. 3 had callously left the patient under the hands of BUMS qualified doctor, Dr Nusrat and nurses for administering the IV medicines. It was also specifically denied that the prescribed medicines were highly dangerous IV antibiotics in bolus form which resulted into the reaction of the medicine culminating into the immediate death of the patient. It was also specifically denied that there had been abuse of noble medical profession, malpractice, gross medical negligence and deficiency in service committed by the opposite parties.

* The opposite party contended that the complainant has come to this court with unclean hands. The complainant while levelling allegations against the opposite parties had deliberately concealed the factum of placing of records, the documents pertaining to his son suffering from Duchenne Muscular Dystrophy (DMD). Though the complainant himself is a doctor holding a very senior position in GB Pant Hospital he had not mentioned in his complaint about the condition of the patient, the treatment accorded to his child in respect of his suffering from DMD. The complainant had deliberately not mentioned about the time since when his child was suffering from the said disease. What was his condition at the time when he was got admitted in the hospital? What was the status of his heart? When and how many times was he given the stem cell therapy? What are the indications of stem cell therapy in the patient of DMD? The complainant had not mentioned the fact their child was wheelchair bound and was not able to sustain himself on his own and required the support of others. The complainants though residents of

Greater Noida, had got admitted their child in opposite party no. 1 hospital just to avail the facility of the policy of the hospital of not charging any money in respect of the doctor's family. The allegations of the complainants, i.e., the son was treated and admitted for the purpose of earning money and out of greed was highly ill-conceived and malafide as it was a matter of record that the complainants had not paid any money for consultant, admission, diagnosis and even for the medicines. Even the costly medicines used at the time of resuscitation including the temporary cardiac pacing leads were not charged by the opposite parties. There was no question of misinformation or misrepresentation as the opposite party no. 3 has discussed in detail the condition of the patient and it was only because the complainant himself was extremely worried about the respiratory infection in the patient of DMD which could lead to severe heart failure and sudden death and thus he himself wanted his child to be admitted and given the treatment. The complainant had informed opposite party no. 3 that the patient was allergic to Penicillin and Cephalosporin and he had not at all mentioned that his son was allergic to Ciprobid group of medicines and that is why the same did not find mention in the medical records. It was on the directions given by the complainant himself that Azithromycin and Levofloxacin antibiotics were prescribed to the patient. In patients who are allergic to penicillin, azithromycin and levofloxacin are the most preferred antibiotics. The presence of pneumonia (Consolidation) to the child has been confirmed by all the three Medical Boards constituted in this case and they have also opined that the anibiotics prescribed were the treatment of choice. It was a misconception and after thought of the complainant that the IV medicines were given in bolus form and the same is also contrary to the findings given by the three Medical Boards. Dr Nusrat was working in the hospital in the capacity of a Floor Manager, coordinating the large number of Muslim patients coming from the nearby area. Dr Nusrat had at no point of time participated in the treatment or signed or advised any medicine for the patient. Throughout the stay, the patient was under the supervision and guidance of qualified doctors and even the expert committee at AIIMS and Delhi Government could not conclude or come to the final decision that any reaction had taken place and they have held that the probability was that the patient couldhave died because of any Dysrhythmia as a consequence of the terminal stage of the disease DMD. The expert Committee of AIIMS and the Medical Board formed by the Government of NCT of Delhi held that there has been no malpractice, medical negligence or deficiency in service on behalf of the opposite parties. Further, with regard to the report of the Delhi Medical Council, the same aspect has already been dealt with in the facts mentioned in the brief facts of the case and was not repeated here for the sake of gravity and convenience.

* The complainant has very cleverly concealed the facts with regard to the condition of his son at the time when he was admitted in the hospital. He has failed to produce any medical record with regard to the condition of the patient or with respect to the condition of the heart of the patient. The complainant had not disclosed that why his son was being given stem cell therapy, how manytime he has received the same and from where he had received the same and other aspects related to it.

* Contents of paragraph 2 (II) were wrong and specifically denied to the extent that the complainant's son had a small health problem. The complainant was fully aware and worried about the cough, cold and impending pneumonia in the patient of DMD which could lead to severe heart failure and sudden death and hence he had advised his wife to get her son examined and admitted in opposite party no. 1 Hospital. The complainants were trying to underplay the same facts in his complaint with ulterior motives.

* The contents of paragraph 2 (III) were wrong to the extent that opposite party no. 3 insisted for admitting his son in the hospital. It was also wrong and specifically denied that the complainant no. 1 categorically warned Dr Anupam that his son previously had severe reaction with the antibiotics like Ciprobid. It was also specifically denied that the complainant cautioned the opposite party no. 3 that highly sophisticated medicines are in normal case are not advisable to be administered to a person suffering from DMD, so only in an inevitable circumstances any sophisticated antibiotics should be prescribed. The child of the complainant was suffering from pneumonia which was confirmed by all the three Medical Boards on the basis of the x-ray attached. It was also a matter of record that the complainant no. 1 had detailed discussion with the opposite party no. 3 regarding the course of treatment as also the method of administration. There was no reason that opposite party no. 3 could not have agreed with the complainant no.1 because the seniority of his position as well as his association and knowledge of long treatment and the seriousness of disease of the patient. It was only on the complainant's advice that the drugs Azithromycin and Levofloxacin were prescribed to the patient.

* It was specifically denied that opposite party no. 3 deliberately ignored and overlooked the precautions and every request of the complainant no. 1 and that he would irresponsibly prescribe such group of medicines against which he was categorically warned. The medicines prescribed by the opposite party no. 3 were in consonance and according to the advice given by the complainant. In fact every request of the complainant no. 1 regarding the choice of medicine and the methods of administration was taken into account and adhered to.

* The allegation that the Radiologist and Pathologist finding did not indicate that Rahul was suffering from pneumonia is totally unfounded, baseless and contrary to the reports of the three Medical Boards which had reviewed the clinical reports, x-ray and other reports.

* It was specifically denied that opposite party no. 3 left the patient under the observations and mercy of the nurse and opposite party no. 4. The patient was properly looked after by qualified resident doctors and Dr Nusart who is a floor manager was nowhere related to the treatment and management of the patient. As per the practice of Hospital it was not denied that the patient was asked to bring the costly medicines from the Chemist shop which was in the immediate vicinity of the hospital.

* It was specifically denied that I V Azithromycin was injected to the patient in bolus form and immediately after its administration IV Livofloxocin was also administered into the patient. I V Azithromycin was injected in a infusion form not in the bolus form. This has been confirmed in the findings of the Board of All India Institute, Delhi Government as well as Medical Council. All the three Boards confirmed that the Azithromycin was given over a period of 30 minutes. It was also denied that the IV Livofloxocin was injected intravenously. I V Livofloxocin was tested by injecting .01 ml of diluted Livoflox intravenously. Patient suffered restlessness and shivering at this time, it cannot be said that whether it was a drug reaction or Dysrhythmias (irregularity in the heart beats) as also mentioned by the Board All India Medical Institute.

* Dr M Khalilullah, a prominent Cardiologist who is practicing in Lajpat Nagar was asked to reach the Sanjeevan Hospital by complainant no.1. Dr M Khalillullah, when he reached to the Hospital also found that the patient's diseased heart was not contracting because of his history of Duchenne Muscular Dystrophy and he also tried to pace

artificially the heart by pacemaker. The pacing was done successfully but the patient heart could not contract. In such a situation the resuscitative efforts were continued but since the heart was not contracting even with pacemaker there was no chance of patient's recovery. The family was taken in confidence and the patient was declared dead.

* At 03.00 clock the patient had just chills and rigor which may be secondary to the pneumonia or to the reaction of the I V Fluid or to the reaction of drugs. However, mere chills and rigors in a patient suffering from Duchenne Muscular Dystrophy (DMD) cannot alone have caused a sudden heart failure which could not be reverted.

* It was specifically denied that the subsequent efforts recorded in the hospital record are just eye wash. It was also specifically denied that the record of the hospital also substantiates that due to reaction of the medicine the patient had died before bringing to ICU. The patient was transferred to ICU at 03.00 p m., and was declared dead at 05.30 p m and in the ICU maximum resuscitative efforts were carried out by Dr M Khalilullah, who was specifically sent to assist the treatment of his child by the complainant no.1, and the averments made by the complainant belies and ignores the facts of the efforts made by Dr Khalilullah, a renowned Cardiologist to save the child.

* The complainant was a Cardiac Surgeon and was fully aware that his son was suffering from DMD and as a heart surgeon himself the complainant was treating him from childhood from the growing disability. Symptoms appears at the age of 5 and by the age of 10 he was on wheelchair and needed support for his day to day necessary activities. The complainant was fully aware that the average life expectancy for the patient affected by DMD varies from late teens to early or mid-twenties. The complainant was fully aware that there is no known cure for Duchenne Muscular Dystrophy. The stem-cell treatment which he had tried was an emerging treatment which was primarily aimed at only controlling the symptoms or to maximize the quality of life. The complainant fully knew the importance of respiratory infection as a cause of sudden death in these patients and that was the reason that even during his absence away in Chandigarh he had asked his wife to take his child to a place where he had faith that quality medical treatment would be offered and which was, as expected, delivered. Most unfortunately the adverse course of the disease took place in the form of precipitating chills which caused sudden heart failure and despite of best services offered to it patient could not be revived. Complainant was fully satisfied with the treatment and he never complained or got an autopsy done. Only as an afterthought, only to extract money, he had filed a series of harassing complaints in different forums, making false and frivolous allegations. One after the other the Medical Boards have not found any truth in the allegations and the observation of the Medical Council is far removed from the medical practice and literature and are under challenge before the Appellate Authority. In such a situation there is no element of professional misconduct and negligence. Professional misconduct and negligence was dealt with in a number of Supreme Court cases as well as NCDRC. While a negligent Doctor must be punished and non-negligent should not be harassed. This was a clear cut case where the complainant being a medical Doctor himself by a number of false and frivolous complaints in different forums is trying the cash the death of his son's suffering from a fatal deadly disease. The Hon'ble Supreme Court in *Kusum Sharma and Ors vs Batra Hospital* (2010 3 SCC 480) has mentioned that "on scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom,

some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:

i. Negligence was the breach of duty exercised 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.

i. Negligence was an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

i. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

i. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

i. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor was clearly not negligence merely because his conclusion differs from that of other professional Doctor.

i. The medical professional was often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/ her suffering which did not yield the desired result may not amount to negligence.

i. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely, because the 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.

i. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

i. It was our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

i. The medical practitioners at time also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical profession/ hospital particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

i. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

60. Since there has been no medical negligence as such the question of extreme review of punitive compensation does not arise. The same was being alleged by the complainant in his greed to extort money from the opposite parties. He was trying to take advantage of the unfortunate fatal disease suffered by his son which was in its terminal stage. There was no basis as such of awarding any punitive compensation and the complainant has just made it for bringing the complaint without the purview of the National Commission. Further the compensation for life long mental agony and trauma of the complainant seeking Rs.2 crore was also without any basis. It was pertinent to mention here that it was the salary of a person which he was receiving at the time of death which has to be taken into consideration while calculation of the compensation. It was only to bring the complaint without the purview of the National Commission that the amount of Rs.10 crore has been sought as compensation and the complainants are trying to make the decision of their son and as a means of harassment and extortion from the opposite parties.

We then heard the counsel for the parties.

61. Learned counsel for the complainant contended that a reading of the treatment records of the respondent hospital filed with the present complaint would show that gross negligence has been committed by the respondent hospital and doctors in the treatment of the complainant's son by wrongly diagnosing pneumonitis and unwarrantedly prescribing high dose sophisticated intravenous antibiotics. Without performing sensitivity test before administering both the intravenous medicines in bolus form within the short interval of 30 minutes which is against the protocol of the medical science, literature of the medicines, i.e. Azithromycin (AZEE 500) & Levofloxacin (Levoflox) were wrongly administered in the present case. Further from the records, it is evident that administration of the these sensitive drugs was performed only in the presence of nurse and a Unani doctor and they were not competent to handle the critical situation

arising out of drug reactions. It is also evident that even after the patient's complaint about restlessness, no emergent measure for treating the drug reaction was taken by the respondents for more than an hour which culminated in the death of the patient.

62. The learned counsel further contended that a Medical Board of the experts and eminent doctors constituted by the Delhi Medical Council (DMC) vide its order dated 3.11.2010 concluded that medical negligence had been committed by the respondents due to which the death of the patient had occurred. The said decision of the DMC was challenged by the respondents before the Board of statutory body of Medical Council of India (MCI) which also vide its order dated 18.5.2011 upheld and confirmed the decision of the DMC. In fact, Dr. S. Bhattacharjee, Director Health Services, Delhi was one of the members of the Board constituted by the DMC. Thus the earlier opinion given on 17.2.2010 as Chairman of the Delhi Health Services by the three members' board would stand overruled. The decision of the Medical Council of India would also make it clear that the report dated 26.10.2010 given by the Medical Board of AIIMS was incorrect and wrong.

63. Learned counsel for the opposite party No.3 on the other hand stated that onus of proving the act of negligence lay on the complainant. In fact a perusal of the medical records would show that the cause of death is uncertain in this case. The deceased was suffering from a terminal disease wherein the average life expectancy itself is only 20-25 years. Moreover, at the time of admission to the OP-1 hospital, he was at the terminal stage of Muscular Dystrophy type-Duchene referred to as DMD which he had been suffering since the early age of 5. DMD is a genetic disease with no cure and the effect of which was muscle wasting which results ultimately into paralysis and eventually death. The disease affects all the muscles including heart and hence ultimately in the final stages turns fatal as all the muscles slowly degenerate. The patient generally becomes terminal in the second decade of his life generally due to the low pumping capacity of the heart as the heart muscles also weaken and the patient die most commonly due to pneumonia. In the instant case, the patient was taking stem therapy on the trial basis as he was at the terminal stage.

64. The complainant residing over 40 kms away from the OP-1 hospital. He however, brought his son to OP-1 hospital because OP -1 treats the family of doctor's free of cost and hence the complainant is not a consumer.

65. The counsel further argued that the complainant's son was suffering from cough with expectoration for the last 10 to 15 days. In patients with DMD, respiratory infection can lead to heart failure and turn fatal. The patient was attended by OP-3, an MD (Medicines) from PGI, Chandigarh who after conducting diagnostic tests found that the pumping capacity of the heart to be less than 20%. The complainant who was at that point of time, Director of G.B Pant Hospital, was on an official tour to Chandigarh. He was, however, in constant touch with the treating doctor. Dr. Anupam Jena and was discussing and approving the line of treatment to be followed. The complainant had informed OP-3 that the patient was allergic to Penicillin and Cephalosporin but had not mentioned that his son was allergic to ciprobid group of medicines and hence while it is recorded in the medical records of treatment that the patient was allergic to Penicillin and Cephalosporin, it does not mention that he is allergic to Ciprobid. It was on the direction of the complainant himself that Azithromycin and Levofloxacin was prescribed. Further, the patient who was allergic to Penicillin, Azithromycin and Levofloxacin are the preferred antibiotic drugs. The drugs which are given by I/V infusion can be tested by I/V infusion. As per European Network of Drug Allergy, test dosing can be done by intravenous route and the same is definitely not contrary to protocol.

66. Azithromycin and Levofloxacin (antibiotics) were administered to the patient along with fluids and other supportive treatment. During the treatment, the patient suffered chills and rigors and hence was shifted ICU and emergency supportive treatment was given. The team of treating doctors also included Dr. M. Khalifulla, a senior Cardiologist and a friend of the complainant No.1 who had come to the hospital to look at the patient at the request of the complainant No.1. Unfortunately, the patient could not be saved despite repeated resuscitation efforts due to DMD. The complainant had raised no issue of any kind of negligence or any malpractice at the time of death of the patient. It is only two months of occurrence i.e. 19.12.2009 that, as an afterthought to extract money from the OP, the complainant out of nowhere raised the allegation of negligence against the OPs and filed a complaint at the Police Station, Daryaganj.

67. The Directorate of Health Services vide its report dated 17.2.2010 held that there was no instance of negligence. The Medical Board of All India Institute of Medical Sciences (AIIMS) also had not found any instance of Medical Negligence on the part of the treating doctors.

68. A bare perusal of the medical record of the deceased as produced and the consent for stem cell therapy in 2004 clearly shows that :-

i. *The patient showed symptoms of DMD since the age of 5 years.*

i. *Complainant consulted several hospitals in the intervening period but the loss of control over the muscles kept on increasing and the health deteriorated over the period of time.*

i. *The loss of movement led to the patient being wheel chair bound by the age of 12/13 years and was even rendered incapable to turn sides.*

i. *By 2002-2003 the deceased was in advance stage and the complainant's parents had lost all hope.*

i. *In 2004 as a last ditch attempt to save patient, the complainant opted and consented for the stem cell therapy. The stem cell therapy was still in research stages and was administered only to volunteers. Moreover, due to the treatment being in research and experimentation stage, there was no fixed line of treatment and the same was at "high risk" procedure. The treatment was in nascent stage but the complainants, however, seeing no other hope had given their consent to high risk procedure.*

69. The complainant No.1 being a senior medical professional himself and being well aware of the requirement of the post-mortem examination report or the absence thereof to a cause of death deliberately did not get a post-mortem done which would have revealed the actual cause of death. The complainant had failed to provide the complete medical records of the patient Rahul Satsangi

before anybody or any Court as also the NCDRC and hence adverse inference should be drawn. In fact the complainant had opposed the order dated 9.8.2010 which ordered for constitution of Medical Board of AIIMS. Further, every mishap or death cannot be attributable to negligence. Success cannot be achieved in every case and failure may be due to factors beyond the control of a doctor.

70. The learned counsel for the respondent Nos. 1, 2 and 4 advanced his arguments by stating that the complainant had levelled the following allegations against the respondents:-

a. *The diagnosis of Pneumonia and the reason for admission.*

(b) The choice of medicines as "Azithromycin" and "Levofloxacin" was a negligent act since Rahul was allergic to Cephalexin.

(c) The route of administration of Azithromycin was bolus while it should have been given as infusion.

(d) The methodology of testing of Levofloxacin as intravenous was a negligent act.

(e) The necessary care was not done after the reaction had taken place.

71. It was contended that the history sheet of master Rahul notes "Cough & Expectoration since 10-15 days, Fever 2-3 days, Mucopurulent Sputum (Indicator of Inflammation and infection), Low grade intermediate fever. Investigation (X-Ray) revealed "Left lower Lung opacity and consolidation".

72. The diagnosis of Pneumonia is not always done by X-Ray. The clinical presentation of fever, Sputum and Cough is the presentation of Pneumonia which was present in the patient and the background disease of DMD in which any chest infection can be fatal warranted urgent and aggressive treatment.

73. The patient was already suffering from pre-morbid condition of Duchenne Muscular Dystrophy which results in Muscular wasting both skeletal as well as heart muscles. In patients with DMD, Pulmonary Infections are often cause of death. Dr. Satsangi who is a senior cardiac surgeon and knowledgeable about the disease and the consequences was aware about the fatal consequence of pneumonia and asked his wife to go to some hospital to get it investigated it and get him admitted.

74. AIIMS Medical Board has made the following observation in regard to the X-Ray that the " *X-Ray of late Mr. Rahul Satsangi is indicative of Patch of Opacity and after clinical correlation with case presentation, the presenting condition of Late Mr. Rahul Satsangi warranted treatment on lines of Pneumonitis ".*

75. Delhi Medical Council in its order dated 3.11.2010 has noted that even though the *"X-Ray was not suggestive of pneumonia, "based on the overall assessment and with presence of a pre morbid condition of DMD, Dr. Anupam Jena was justified in making provisional diagnosis of Pneumonia and admitting the patient despite the absence of radiological sign which may be absent in the early stages of pneumonia."*

76. Dr. Satsangi was consulted by Dr. Anupam Jena on telephone and informed him about the left lower zone opacity which could be a consolidation and after his discussion only the patient was admitted.

77. Dr. Anupam Jena is a qualified medical practitioner MD in medicine from PGI and now DM in cardiology from PGI was fully capable and knowledgeable for making such a diagnosis.

78. The treatment of chest infection can only be done by antibiotics. The choicest antibiotics could have been "Penicillins and Cephalsporin". Dr. Satsangi informed Dr. Jena on telephone that the patient is allergic to Cephalaxin and thus no betalactum group which "Penicillins and Cephalsporin" should be given. "Azithromycin and Levofloxacin" was the best drugs to be used in patients who were allergic to "Penicillins and Cephalsporin" for the treatment of pneumonia and also these drugs were to be used intravenous route to have an urgent impact on the process of the disease keeping the background which is of muscular dystrophy.

79. AIIMS has also discussed the choice of drugs and says " *the literature does not suggest that Levofloxacin and Azithromycin are contraindicated in such case. These drugs can be administered to such patients under controlled conditions following due precautions "*.

80. The Delhi Medical Council also mentioned " *to prescribed IV azithromycin and levofloxacin as drugs for treatment after test does, can also not be faulted as the same are the recommended drugs for pneumonia "*.

81. Dr. Anupam Jena telephonically discussed about the same drugs with Dr. Satsangi who is the father and the professor of cardiac surgery and the physician who then approved of the same as mention in the case sheet and accordingly the drug was ordered to be administered.

82. The History Sheet under the section "Allergy to any drugs" clearly finds the mention of "Cephalexin". It also occurs in the History Sheet that the father of the patient had himself self-stated that patient is allergic to Cephalexin and should not be given penicillin.

83. In view of the above allergies, Azithromycin and Levofloxacin group of medicines was the best choice of medicine for the patient. The Delhi Medical Council has made the following observation " *The complainant informed that the patient is having allergy to penicillin, cephalosporin and ciprobid group of medicines and recommended that he should be given Azithromycin and Levofloxacin group of drugs which would be safe for his son* . It has further noted " *It is reconfirmed that medicines Azithromycin and Levofloxacin are the antibiotics of choice in patients who are having allergy to all other drugs "*.

84. Before the administering the Drugs, father of Patient was informed the treatment record clearly notes "inform Dr. Satsangi (father)" written against the advice of Azee (Azithromycin) and Leviflox. On 21.10.2009 it was adviced to start antibiotics both Azee & Levoflox after test dose.

85. "Azithromycin" is an antibiotic which is to be given in an infusion form and was given as an infusion form. Only Dr. Satsangi is repeatedly complaining that as "Azithromycin" was given as bolus and it has caused some reaction which is wrong and *malafide* . Patient at 1.15 pm was received in the ward and was having a temperature of 102 ^{o} F and Azithromycin" was started. At 3 pm the test does was given for "Livofloxacin" confirming the fact that the Azithromycin was not given in the bolus form.

86. The AIIMS specialist board has mentioned this issue *"though medical records and nursing notes do not clearly indicate that Azithromycin was given as an infusion however, the time mentioned for Azithromycin and next drug administration suggest that it could have been given over a period of 30 minutes.*

87. The Medical Council of India also mentioned " *the committee is of the opinion that allegation of patient's father, Dr. Satsangi that IV Azithromycin was given as a bolus against the standard practice of giving it as an infusion cannot be substantiated from the available records "*.

88. Levofloxacin and Azithromycin are non-beta-lactum group of medicines for which there is no standardized way of testing. The subcutaneous testing which is commonly considered to be a safe method of testing is only standardized against the penicillin group of antibiotics and is recommended in beta-lactum groups of medicines.

89. For other antibiotics, "US department of Health and Human Services" which issues guidelines for allergy diagnostic testing clearly mentioned that " *215 there are no validated diagnostic tests of sufficient sensitivity of evaluation of IgE medicated allergy to antibiotics other than penicillin" and "216 Skin testing with nonirritating concentrations of other antibiotics is not standardized. A negative skin test result does not rule out the possibility of an immediate type allergy. A positive skin test result suggests the presence of drug-specific IgE antibodies, but the predictive value is known"*.

90. For testing methods, "ENDA European Network for Drug Allergy and the EAACI intest group on drug hypersensitivity" issued a guidelines about Route of administration and mentioned that " *the different routes of administrations include oral, parenteral (iv, im, sc), and topical (nasal) (26), bronchial (27) conjunctiveal (28), cutaneous (29), etc. application of the test substance. Although the drug should in principle be administered in the same way as it was given when the reaction occurred "*.

91. For non-beta lactam antibiotics like Livofloxacin and Azithromycin an updated practice parameter developed by the "Joint task force on practice parameters, representing the American academy of allergy" mentioned in "Summary statement that 110: there are no validated diagnostic tests for evaluation of IgE mediated allergy to non-beta lactam antibiotics. Evaluation of possible allergy to these antibiotics should be limited to situations when treatment with the drug is anticipated (rather than electively as for penicillin) (D)".

> *Summary Statement 111: Skin testing with non-irritating concentrations of neon-beta lactam antibiotics is not standardized. A negative skin test result does not rule out the possibility of an immediate type allergy. A positive skin test result suggests the presence of drug specific IgE antibodies, but the predictive alue is unknown (D)"*.

92. In fact the issue of the Livofloxacin should be given subcutaneously is absurd because even the drug monogram contraindicate, the use of drug as subcutaneous at one stage there is no relevance of testing and if at all it has to be tested it can only intravenously. The matter was only raised by Delhi Medical Council a disciplinary committee non-expert members and was not even considered by the expert board of AIIMS.

93. Mr Rahul Satsangi who was a known case of DMD suffering from pneumonia who was having a fever of 102 ^{o} F on admission, while in the treatment developed chills and rigor and collapsed. All efforts of resuscitation were done but could not be resuscitate.

94. The patient of DMD normally complete their life in late teens or early 20s and the mode of death is normally is chest infection or cardiac arrhymias.

95. Mr. Rahul Satsangi was a terminal patient of muscular dystrophy who was diagnosed DMD at the age of 7 years because of abnormal gate proximal muscle weakness and been dull in studies and has a biopsy done which confirms the diagnosis of muscular dystrophy.

96. By 2004, patient condition was again hopeless and as a last hope Dr. Satsangi chose to use the experimental treatment of stem cell.

97. At 3.00 pm patient develop chills and rigor while he had received the infusion of Azithromycin and was getting tested for injection levofloxacin.

98. At 3.00 pm suspecting a reaction as a cause of chills and rigor patient was given injection Effcorlin 100 mg IV stat, Inj. Avil (IV) stat and normal saline was started which is a standard treatment for dealing with a reaction and the patient is shifted to ICU.

99. At 3.10 pm, patient was noted to have a cardiac arrest, at 3.14pm patient was intubated and cardiopulmonary resuscitation was initiated as per the standard advanced life support protocol. At 3.20 pm patient heart was responding and was showing a slow heart rate of 40 bp per minutes and patient was responding to the verbal commands. At 3.40 pm Inj. Atropine 0.5mg was given and patient was responding to verbal commands but the blood pressure was not recordable. At 4.45 pm, even a temporary pace marker was installed to pace the heart but the heart was showing capture of the electricity but was no contraction and 5.30pm patient was declared Dead.

100. The board of AIIMS mentions the “sequence of events suggest the patient had cardio respiratory arrest which could have been due to an arrhythmia or drug reaction following which the patient was shifted to ICU where cardio respiratory resuscitation was carried out. However, the patient could not be revived and died in the ICU.

101. That the Chills and Rigors can never be said with certainly to have been resulting from drug reaction. In fact it is more plausible that the same occurred due to Pneumonia and had caused the cardiac respiratory arrest in a diseased heart or Arrhythmia which could have been the ultimate cause of death.

102. That death due to Cardiac Arrest and Arrhythmia occurs in patients suffering from DMD. This is because, the wasting of muscles also diminishes the Heart pumping capacity which results in Cardimyopathy which ultimately causes Arrhythmic Heart contractions and hence cardiac arrest. Even the AIIMS Board has noted that *Cardiac involvement is known to occur in patients suffering from Duchennes Muscular Dystrophy* .

103. AIIMS board also noted that the complainant has not produced medical evidence to let the board know about the Pre Morbid Cardio Respiratory Status of the patient as “ *according to the complainant Dr. D.K. Satsangi they have been lost during the course of shifting of their house* ”.

104. For reasons unknown cause Mr. Rahul Satsangi was brought to Sanjeevan Hospital for emergency treatment 45 kms away from his residence and only 500m away from GB Pant Hospital where his father is the head of the department of cardiac surgery. The only reason that can be considered that Sanjeevan Hospital has a policy for free treatment for the family of medical practitioners.

105. Dr. Satsangi was constantly in touch with the treatment of his son and has discussed with the treating physician, Dr. Anupam Jena about the diagnosis, the choice of drugs, the route of administration and the strategy of treatment. So much so that even at the time of cardiac arrest he immediately asked his close friend Dr. M. Khallilulah to assist and help in the resuscitation, who came and did the trans femoral temporary pacing of the heart to stimulate the heart and revived.

106. Dr. Satsangi was totally satisfied for the treatment and never showed any sign of dissatisfaction or questioned on the quality of treatment and the body was sent without any charges to Greater Noida as a mark of respect to a professional colleague.

107. The respondents made all attempts to resuscitate but no success was achieved. There is no indication in the treatment records that the drugs were administered in the absence of a qualified doctor. Neither is there any proof of drug reaction. In fact it is most plausible that the Chills and rigors were due to arrthymia. That the AIIMS Medical Board has in detail considered the case and has held the line of treatment adopted to be just and proper. It is therefore prayed that the complaint be dismissed.

108. We have heard the counsel of the parties and carefully gone through the record. It is an admitted fact that Rahul Satsangi son of the complainant had been diagnosed as suffering from Duchenne Muscular Dystrophy. He had been admitted in AIIMS on 3.3.1997 and was there till 6.3.1997.

His history reads as under:-

"Name : Rahul Age/Sex : 7 Years/ M CR no. 493312

DOA : 03.03.1997 DOD : 06.03.1997 Ward/Bed : NS 4/23

History: This child admitted with c/o abnormal gait. Proximal muscle weakness in lower limbs and calf muscles hypertrophy for last 1.5 years. No family history of similar disease. Child is slightly dull in studies.

O/E Active child. B/L calf hypertrophy present and mild hypertrophy of vastus lateralis. Power all gribs of muscles 4+/5. DTJ – 2+ B/L

Investigations:

CPK (Private) – 38 (0 (Sept. 95) and 3000 (August 96)

X-ray Chest (Private) showed cardiomegaly

Muscle biopsy done on 05.03.1997 – report awaited.

Diagnosis : Duchenne Muscular Dystrophy."

109. It is obvious from the above that Rahul Satsangi was a confirmed patient of Duchenne Muscular Dystrophy and even in March 1997 his chest X-ray had shown Cardiomegaly i.e. enlargement of the heart. The diagnosis and prognosis of both the DMD and Cardiomegaly would have been known to complainant No.1 who himself was a cardiac surgeon. The complainants have given no medical record to the OPs regarding his condition with regard to DMD and the condition of the heart at the time of admission. Neither has any treatment record from the period 1997 to 23.10.2009 been put on record. However, the condition of Rahul Satsangi can be adduced from other material on record as discussed in the following paras.

110. On 11.6.2004, Dr. Geeta B. Shroff, had written a letter to Director General, Indian Council of Medical Research regarding administration of stem cell therapy to Rahul Satsangi. At that point of time he was 14 years. The aforesaid letter reads as under:-

"With reference to your letter No.80/8/2003-BMS dated 8/9 January, 2004 read with our letter No.09/05/03-NTM that this institution has taken up the following case for transplantation of stem cells at the earliest:

"1	*Name of the patient*	*:*	*Master Rahul Satsangi*
2	*Age*	*:*	*14 years*
3	*Suffering since*	*:*	*From the age of 5-6 years age. He is confined to wheel chair and is totally dependent for all activities. When lying down, he cannot even turn.*
4	*Disease*	*:*	*Duchenne Muscular Dystrophy. Parents have exhausted all known traditional treatment & visited several hospitals.*

REMARKS	*:*	*The disease has already reached an advanced stage. Immediate intervention need to be tried for prevention of further disabilities and is possible to regress the disease process."*

111. Placed on file is an affidavit of complainant No.2, the mother, dated 11.06.2004, which reads as under:-

> *"I Shrimati Poonam Satsangi, D/o Shri R.S. Mathur, resident of Flat No.1, Opposite Old Undergraduate Boys Hostel, Maulana Azad Medical College Campus, New Delhi 2110 002. Mother of master Rahul Satsangi (age 14 years) has been suffering from Duchenne Muscular Dystrophy since he was a very small boy, but firm diagnose was made when he was about 5 years of age. I had taken him to several hospitals including AIIMS and Leads Hospital in England and also specialists at Singapur. Several physicians too had been consulted. DNA testing was done at both AIIMS and Leads Hospital and both confirmed him to be suffering from the above mentioned incurable disease. Thus after having lost all hope, we heard of stem cells therapy. I have brought my son to Nutech Mediworld, New Delhi for this therapy.*
>
> *I have been told in clear and no uncertain terms both in English and Hindi, that the treatment is not yet firmed up and there might or might not be any benefit. Knowing and understanding this fully, I volunteer on our freewill to get the stem cells therapy from Nutech Mediworld, New Delhi to my son Master Rahul Satsangi who is suffering from Duchenne Muscular Dystrophy since many years. I am told that the stem cells therapy might or might not improve his condition."*

There is also a hand written consent letter also by the mother, which reads as under:-

> *"I Mrs. Poonam Satsangi mother of master Rahul Satsangi have been fully explained by the doctor that the stem cell therapy is a new emerging treatment which is yet under clinical trial and I was also explained in Hindi and English that the treatment might or might not bring a cure or improve the life of my son. I know that my son is suffering from DMD and is not able to stand on his own and unable to survive without support and we have exhausted all other lines of treatment available and we see this is to be our last hope so knowing and understanding its full implication we volunteer to try this stem cell therapy to my son Rahul Satsangi. Therefore, I volunteer to get stem cell therapy to my son."*

112. From the above, it is evident that the complainants were aware that their son Rahul Satsangi had been suffering from DMD since he was a very small boy and a confirmed diagnosis was given when he was 5 years of age. The complainants were aware of his condition and taken him to several hospitals in India and abroad looking for a possible treatment for the ailment. They volunteered to resort to stem cell therapy as they had lost all hopes. They were also aware that the

treatment was not yet firmed up and might or might not benefit. Yet they had given their consent to subject their son to stem cell therapy.

113. The DMD as per medical literature is a recessive X-linked form of muscular dystrophy, affecting around 1 in 3600 boys which results in muscle degeneration and premature death. It is caused by an absence of dystrophin a protein that helps keep muscle cells intact. Symptoms usually appear in child between 2 to 5 years. Muscle weakness can begin as early as age 3, first affecting the muscles of the hips, pelvic area, thighs and shoulders and later the skeletal muscles in the arms, legs and trunk. By the early teens, the heart and respiratory muscles are affected. Until relatively recently boys with DMD did not survive much beyond their teen years. Thanks to advances in cardiac and respiratory care, life expectancy is increasing and survival into the early 30s is becoming more common. There is no known cure for DMD. Treatment aims to control symptoms to improve quality of life. DMD however, leads to progressively worsening disability. In the instant case, Rahul Satsangi was suffering from Cardiomegaly from an early age as diagnosed by AIIMS when he was 7 years old in March 1997. Cardiomegaly leads to certain complications such as heart failure due to weakening of heart muscles, blood clots, heart murmur, cardiac arrest and sudden death.

114. As per the evidence of complainant No.1 i.e. Deepak Kumar Satsangi, his son Rahul Satsangi for the last 2-3 days had contracted common cold and was having running nose and moderate grade fever. His wife i.e. complainant no.2 got worried and "suspected that Rahul might have been suffering from pneumonia and accordingly she complained to me about her suspicion to rule out the possibility of pneumonia I asked her to have Rahul's chest X-ray and blood tests". Since he had gone to Chandigarh to attend an important medical seminar he entrusted this task to his wife and a family friend Shri Amrit Bhushan Chawla.

115. Complainant No.2 however, by way of evidence affidavit states that "on 24.10.2009 in the morning my husband Deepak Kumar Satsangi has left the house for Chandigarh for attending the seminar. At the time of leaving house he had instructed me to have the chest X-ray and blood test of Rahul as since 2-3 days he was suffering from cold and moderate grade fever. I say that in the noon on 24.10.2009 along with long with Shri Amrit Chawla our family friend brought my son Rahul to respondent no.1 hospital.

116. The history sheet of OP-1 on admission, with regard to the present complaint, however, states that as on 24.10.2009 Rahul Satsangi had been suffering from cough and expectoration for the last 10 to 15 days with fever for the last 2-3 days. He had ***mucopurulent*** sputum as low grade intermittent fever. It also records that he is a known case of DMD currently on stem cell therapy. At the time of admission, he had a fever of 100 ^{o} F and chest examination showed crepts in the infra axially and scapular region. As per the admission form, he was admitted because he was a known case of Duchenne muscular dystrophy with chest infection and respiratory failure. He was admitted at 12.35 pm with the consent form signed by the family friend Amrit Chawla even though the complainant no.2 i.e. mother was present.

117. In his affidavit evidence complainant no.1 states as under:-

> *"In the OPD Rahul was examined by Dr. Anupam Jena, respondent no.3 and the chest X-ray and blood for test was taken. Upon receiving the chest X-ray Dr. Anupam represented to my wife, complainant no.2, that Rahul is suffering from severe pneumonia (consolidation) and insisted her for immediately admitting him in the Hospital. In the*

presence of Shri Amrit Chawla my wife request Dr. Anupam to telephonically apprise me about the illness of Rahul. In the telephonic discussion Dr.Anupam also informed to me that Rahul is suffering from severe pneumonia (consolidation) and requires urgent hospitalization. Then I categorically informed to Dr. Anupam that Rahul previously had sever reaction with the antibiotics like Cephalaxin and Ciprobid and also cautioned him that normally highly sophisticated antibiotics are not advisable to him because of his suffering from Muscular Dystrophy so only in an inevitable circumstance any warranted antibiotics should be prescribed and also clearly instructed him that before administering of any such medicine proper sensitivity test under the strict supervision of qualified doctor must be confirmed."

118. The complainant no.2 has also in her affidavit evidence stated as under:-

" Upon receiving the chest X-ray Dr.Anupam represented to me that Rahul is suffering from severe pneumonia (consolidation) and insisted me for immediately admitting him in the Hospital. In the presence of Shri Amrit Chawla requested Dr. Anupam to telephonically apprise my husband about the illness of Rahul. In the telephonic discussion Dr. Anupam also informed to my husband that Rahul is suffering from severe pneumonia (consolidation) and requires urgent hospitalization. Then my husband categorically informed to Dr.Anupam that Rahul previously had sever reaction with the antibiotics like Cephalaxin and Ciprobid and also cautioned him that normally highly sophisticated antibiotics are not advisable to him because of his suffering from Muscular Dystrophy so only in an inevitable circumstance any warranted antibiotics should be prescribed and also clearly instructed him that before administering of any such medicine proper sensitivity test under the strict supervision of qualified doctor must be confirmed."

Mr. Amrit Bhushan Chawala in his affidavit states as under:-

"Upon receiving the chest X-ray Dr.Anupam represented that Rahul is suffering from severe pneumonia (consolidation) and insisted for immediately admitting him in the Hospital. Smt. Poonam Satsangi requested to Dr. Anupam to telephonically apprise her husband about the illness of Rahul. In the telephonic discussion Dr. Anupam also informed to Dr. D.K. Satsangi that Rahul is suffering from severe pneumonia (consolidation) and requires urgent hospitalization. Then Dr. Satsangi categorically informed to Dr. Anupam that Rahul previously had severe reaction with the antibiotics like Cephalaxin and Ciprobid and also about his suffering from Muscular Dystrophy.

I say that Dr. Anupam was adamant to admit the patient. As such on persuasion of Dr. Anupam at 12.35 p.m. Rahul was admitted in the respondent no.1 Hospital and his admission was also informed to the Consultant Doctor, Dr. Prem Aggarwal. The consent Form to Admission was signed by me and also at that point of time the estimated bill of the Hospital expenses for Rs.3200/- was served."

119. It is evident from the above that on receiving the results of blood reports as also the X-Ray report and clinical examinations Dr. Anupam Jena i.e. OP-3 advised hospitalization. Complainant no.2 requested that complainant no.1 may be informed telephonically and his consent taken. There is nothing on record to show that complainant no.1 had any reservations regarding admission of the patient in the hospital of OP-1 and placing Rahul under the medical care of OP- 3. Amrit

Chawla, the family friend, was permitted to sign the consent form for admission. It is nowhere on record that the complainant no. 1 advised taking a second opinion or deferring the admission till he could return from the Chandigarh or in alternative if hospitalization was urgent and necessary advising complainant no.2 to get him admitted to a hospital where he had been treated earlier and where the doctors were familiar with his condition and the treatment he had been receiving from childhood. This was particularly when it appears from the record that complainant no.2 took her son Rahul Satsangi to OP -1 without any previous medical record of Rahul Satsangi and as such the treating doctors had to depend upon the history told to them by complainant no.2 in person and complainant no.1 on telephone, both with regard to his condition as also his various allergies. Complainant no.1 could have at least discussed this option particularly as it appears from the complaint that the complainant no.1 was pretty sure, as a doctor and as he is looking after his son for many years that Rahul Satsangi was suffering from some small health problems of coughing, fatigue and fever. In his complaint he states as under:-

> *"That on 24.10.2009, the complainant no.1 was required to attend a medical seminar/conference at Chandigarh and he left for Chandigarh in the morning. Since the son of the complainants Rahul had some small health problem of coughing, fatigueless and feverish, while complainant no.1 was leaving his home for Chandigarh complainant no.2 as a common nature of all mothers was over precautions about the health of his son, expressed her desire to consult a physician. However, complainant no.1 being a doctor himself was sure enough that there is nothing to worry about the illness of Rahul as it was the symptoms of common cold and fever, but just for the satisfaction of his wife he instructed her that by the time he is back home take the help of Shri Amrit Chawla, who is their family friend, for having the chest X-ray and other Blood Tests of Rahul, just for the reason to rule out the possibility of pneumonia and, if necessary, to consult a physician. Accordingly, complainant no.2 called Shri Amrit Chawla for the said help upon that he asked her to come to Sanjeevan Medical Research Centre (P) Ltd., 24 Ansari Road, Daryaganj as the Hospital was near to his place."*

120. The complainants have alleged that Rahul Satsangi had not been suffering from pneumonia. The diagnosis was given only to justify the admission of Rahul Satsangi in the hospital out of gread of the OPs. The complainants have relied only on the chest X-ray of Dr. Nidhi Bhatnagar. However, it is recorded that as per the clinical investigation and the X-ray there was left lower opacity and may be consolidation. He had a temperature of 102 F. The diagnosis was discussed with the complainant no.1 on telephone as mentioned above. He had many options and alternatives to ensure that Rahul Satsangi was not suffering from pneumonia and if he thought justified could have deferred admission till his immediate return from Chandigarh.

121. The DHS report dated 17.2.2010 has stated that as per the records of the hospital, the physician clinically examined the patient and ordered an X-ray chest which showed left lower zone opacity query consolidation. As per the hospital records, Dr. Anupam after evaluation of the patient on 24.10.2009 suspected lower respiratory tract infection (pneumonia) and accordingly prescribed antibiotics I.V. Azithromycin and I.V. Levefloxacin after the test dose. The DHS has found no fault with the diagnosis.

122. The report of medical board of AIIMS dated 26.10.2010 also notes that the X-ray chest of late Mr. Rahul Satsangi was indicative of a patch of opacity and after clinical correlation with case presentation the presenting condition of Late Mr. Rahul Satsangi warranted treatment on the lines of pneumonia.

123. The Delhi Medical Council in their report dated 3.11.2010 has noted as under:-

> *"1. It is noted on examination of original X-ray No.304 dated 24.10.2009 of late Rahul that radiologically there was no significant evidence of pneumonia. In fact, it was suggestive of cardiomegaly as was reported by Dr. Nidhi Bhatnagar. However, based on the overall clinical assessment, in patient with presence of a co-morbid condition i.e. Duchenne Muscular Dystrophy, Dr.Anupam Jena was justified in making the provisional diagnosis of pneumonia and admitted the patient in the Hospital despite the absence of radiological sign which may not be evident in the early stage of pneumonia.*
>
> *2. To prescribe I.V. Azithromycin and Levefloxacin as drugs for treatment after test dose, can also not be faulted as the same are the recommended drugs for pneumonia. However, the administration of the test dose of aforementioned drugs intravenously is not recommended and should not have been prescribed in the patient with a history of drug allergy. It is noted from the nurses record (management chart) of the said Hospital that the patient was administered on 24.10.2009, Inj. Azithromycin 500 mg I.V. at 2.30 pm and test dose of Inj. Levefloxacin 0.1 ml I.V. was given at 3 pm, subsequent to which the patient had a sever drug reaction as is evident from his having chills, rigors and restlessness. The complication of drug reaction was countered by administration of Inj. Efcorin, Inj. Avil, IV DNS as per standard protocol. Unfortunately, the patient's condition worsened and in spite of all resuscitative measured he could not be revived and was declared dead at 5.30 pm (24.10.2009). It is observed that the severe drug reaction exacerbated the co-morbid condition of the patient resulting in his death."*

124. From the above, it is evident that the allegation of complainants that Rahul Satsangi was not suffering from pneumonia has not been supported by the findings of Director of Health Services, the Medical Board of AIIMS as also the Delhi Medical Council.

125. The next allegation is regarding the course of treatment given to Rahul Satsangi. He has alleged that he had informed OP-3 Dr. Anupam Jena on telephone regarding Rahul Satsangi's allergy to Cephalaxin and Ciprobid and yet he prescribed Azithromycin and Levefloxacin. He also alleged that the test dose of Azithromycin was given as bolus and while not contesting the fact that test dose was given alleged that it should have been as a skin test and not by infusion through I.V. He also alleged that there was no emergency tray containing lifesaving drugs such as Cortisones, Adrenaline, Noradrehaline etc., available in the ward. He alleged that the present case was not one of mere simple case of negligence on the part of the hospital but of 'gross negligence' amounted to 'criminal negligence' on the part of the respondent doctors which took the life of complainant's son.

126. We have carefully gone through the medical records. In the history sheet under the column 'Drug History, under "allergy to drugs", it has been noted that the patient was allergic to Cephalexin (informed by the father). Based on the provisional diagnosis of LRTI (Pneumonia) LLF Opacity, he was thus prescribed Azithromycin and Levefloxacin I.V. <u>after test dose</u> . Dr. Anupam has also recorded that discussed with father "Dr. Satsangi" the patient is allergic to Cephalaxin, no penicillin to be given. The medicines prescribed were also informed to Dr. Satsangi father as recorded in the same medical record under the signature of Dr Anupam.

127. As per the admission of Dr. Satsangi he was constantly monitoring the diagnosis and treatment of his son Rahul Satsangi even while attending the important conference in Chandigarh

due to which he could not be present when his son was admitted. There is nothing on record to show that he had mentioned that he is allergic to Ciprobid. It is just his word against that of Dr. Anupam. We find it difficult to believe that if he had also mentioned the allergy to Ciprobid, why Dr Anupam would wilfully and intentionally neglect to record the same in the treatment record when he has recorded that the Dr. Satsangi had informed him about the allergy to Cephalaxin and penicillin group of drugs. Further complainant no.1 Dr. Satsangi had been informed about the medicines being prescribed. If he had any doubts he could have suggested the medicines of his choice particularly as from the record it appears that he had been treating Rahul Satsangi himself. It was his bounden duty as a father, who was also the medical doctor who was treating his son to have been cautious in consenting to his son being admitted, without making available previous medical record in a hospital that he did have confidence in and for treatment by doctors who had not earlier examined and treated his son who was in the terminal stages of DMD. Even after giving his consent to the hospitalisation of his son he should have advised Dr. Anupam Jena, in no uncertain terms regarding the drugs to be given to Rahul Satsangi. He made no objection, as per the records available, to the prescription and the advice regarding administration of Azithromycin and Levefloxacin after test dose. Further, there is also nothing on record to support his allegation that Azithromycin was given as bolus.

128. While the report of Directorate of Health Services dated 17.2.2010 does not comment on the choice of drugs. The report of the All India Institute of Medical Sciences dated 26.10.2010, reads as under:-

> *"Cardiac involvement is known to occur in patient with Duchenne Muscular Dystrophy. The literature does not suggest that Levefloxacin and Azithromycin are contraindicated in such cases. These drugs can be administered to such patients under controlled conditions following due precautions.*
>
> *Though medical records and nursing notes do not clearly indicate that Azithromycin was given as an infusion however, the time mentioned for Azithromycin and next drug administration suggest that it could have been given for a period of 30 minutes.*
>
> *The records also suggest that patient had an acute worsening with shivering and cardio respiratory arrest after the test dose of Levefloxacin."*

129. The report of the Delhi Medical Council dated 3.11.2010 recorded as under:-

> *2. To prescribe I.V. Azithromycin and Levefloxacin as drugs for treatment after test dose, can also not be faulted as the same are the recommended drugs for pneumonia. However, the administration of the test dose of aforementioned drugs intravenously is not recommended and should not have been prescribed in the patient with a history of drug allergy. It is noted from the nurses record (management chart) of the said Hospital that the patient was administered on 24.10.2009, Inj. Azithromycin 500 mg I.V. at 2.30 pm and test dose of Inj. Levefloxacin 0.1 ml I.V. was given at 3 pm, subsequent to which the patient had a sever drug reaction as is evident from his having chills, rigors and restlessness. The complication of drug reaction was countered by administration of Inj. Efcorin, Inj. Avil, IV DNS as per standard protocol. Unfortunately, the patient's condition worsened and in spite of all resuscitative measured he could not be revived and was declared dead at 5.30 pm (24.10.2009). It is observed that the severe drug reaction exacerbated the co-morbid condition of the patient resulting in his death."*

130. While both the complainants and the opposite parties have given us medical literature regarding administration of test dose, it would appear that there is no mandatedstandard protocol for administration of the test dose of Azithromycin and Levefloxacin. While literature given by the complainants would suggest that a skin dose was the method of choice for penicillin would not be so effective for other antibiotics. Other literature would suggest it could have been a skin test. Literature given by the OPs suggested that these drugs which were to be given by IV could also have been tested for drug allergy through IV. No literature was put on record to state that, what is the universally mandated standard protocol on which it could be concluded that administration of test dose of drugs through IV was not recommended and was not as per standard protocol.

131. The complainant Dr. Satsangi's allegation regarding negligence in Rahul Statsangi's treatment after he suffered from Chills and rigors is not borne out by the medical record on file. He first experienced chills and rigors after receiving test dose of Inj. Levoflox at 3 pm and thereafter he was closely monitored and given resuscitative treatment, i.e., injections Effocorin and Avil Stat IV DNS. He was shifted to ICU with a doctor at 3.10 pm, i.e., within 10 minutes where he was hooked to monitor and ambulatory ventilation started as also CPR. He was being regularly monitored and treated thereafter as per the notations in the record at 3.10 pm, 3.14 pm, 3.20 pm, 3.40 pm, 4 pm and 4.30 pm. At 4.45 pm Dr. Khalillulha, as requested by Dr Satsangi attended the patient. He also tried to revive the patient by placing TPI in via (R) femoral vain. After placing TPI, there was full capture. However, the patient could not be revived and he died at 5.30 pm.

The DHS in its report dated 17.02.2010 recorded as under:

> *"As per the records of the hospital, all resuscitative measures were carried out in the ICU including temporary pacing and consultation with the Senior Cardiologist. The patient, however, could not be saved".*

132. The report of the All India Institute of Medical Sciences dated 26.10.2010, recorded as under:-

> *"The sequence of events suggest the patient had cardio respiratory arrest which could have been due to an arrhythmia or drug reaction following which the patient was shifted to ICU where cardio respiratory resuscitation was carried out. However, the patient could not be revived and died in the ICU."*

133. The Delhi Medical Council in their report dated 3.11.2010 has recorded as under:-

> *"2. To prescribe I.V. Azithromycin and Levefloxacin as drugs for treatment after test dose, can also not be faulted as the same are the recommended drugs for pneumonia. However, the administration of the test dose of aforementioned drugs intravenously is not recommended and should not have been prescribed in the patient with a history of drug allergy. It is noted from the nurses record (management chart) of the said Hospital that the patient was administered on 24.10.2009, Inj. Azithromycin 500 mg I.V. at 2.30 pm and test dose of Inj. Levefloxacin 0.1 ml I.V. was given at 3 pm, subsequent to which the patient had a sever drug reaction as is evident from his having chills, rigors and restlessness. The complication of drug reaction was countered by administration of Inj. Efcorin, Inj. Avil, IV DNS as per standard protocol. Unfortunately, the patient's condition worsened and in spite of all resuscitative measured he could not be revived and*

was declared dead at 5.30 pm (24.10.2009). It is observed that the severe drug reaction exacerbated the co-morbid condition of the patient resulting in his death."

134. Based on the available medical record as also the three reports mentioned above, we find that the complainant has failed to prove his allegation regarding negligence after the alleged drug reaction.

135. We have mentioned and recorded the findings of the report of the inquiry conducted by the DHS in the case referred by the Office of the Dy. Commissioner of Police to Directorate of Health Services as also the report of the Medical Board of AIIMS in compliance of the order of the NCDRC and the report of the Delhi Medical Council upheld by the Medical Council on a complaint filed by the complainant himself, at length with reference to the allegations. The complainant filed a slew of complaints and cases against the OPs with the police, a criminal case before a Magistrate and also with the Medical Council of India and the NCDRC. Two expert medical bodies, i.e., Directorate of Health Services and All India Institute of Medical Sciences examined the complaints as referred to them by the police and NCDRC respectively. Both found no evidence of "gross negligence" on the part of the treating doctors/hospital in the treatment of late Mr. Rahul Satsangi. They were of the opinion that the treatment in management with regard to the patient was appropriate.

136. The Delhi Medical Council, alone, has given a partially contradictory report. While absolving the doctors and the hospital on almost all counts and allegations of negligence, it has held Dr. Anupam Jena guilty of administration of test dose of the drugs intravenously to the patient with the history of drug allergy. It concluded that Dr. Anupam Jena had failed to exercise reasonable degree of knowledge which was expected of an ordinary prudent doctor by prescribing administration of test dose of antibiotics, namely, Azithromycin and Levefloxacin intravenously standard of protocol and especially the patient with the known history of drug allergy. The Delhi Medical Council has, however, failed to enclose or mention the standard protocols prescribed and the authority based on which it arrived at this conclusion.

137. The police closed the case on receiving the report of the Directorate of Health Services dated 17.02.2010. The police closed the case vide their letter dated 28.4.2010 and also informed the Delhi Medical Council as also Dr. Satsangi. It may be mentioned here that the complainant wrote a letter on 25.3.2010 to Dr. S. Bhattacharjee, Director Health Services. Paras 2, 3, 4 read as under:-

"You are fully aware that Delhi Health Services is not a competent authority to give such opinion. However, the reason best known to you, you allegedly, as intimated to me by the SHO, Darya Ganj, Delhi vide his letter dated 11.3.2010, constituted a Medical Board and submitted an opinion to him vide communication dated 17.12.2009 and arrived at conclusion that "the treatment and management given to the patient was appropriate and prima facie there is no gross rashness/negligence/omission involved in the treatment/management of the patient." I am surprised to note such opinion. You may also appreciate that I am being a doctor is fully aware about the entire facts and on the basis of the documents I can demonstrate before any authority including the Medical Board that my son has expired only due to the wrong medication given by the aforesaid doctors in the Institute of Dr. Prem Aggarwal. However, unfortunately any such decision has been taken behind my back without even giving any information to me for presenting my case and to assist the Medical Board to arrive at conclusion. In any case you are

kindly requested to supply me the entire documents forwarded to your goodself by the SHO Darya Ganj, Delhi and further to give me the details of the Board allegedly constituted by you and the copy of the decision taken by them along with the reasonings given by them for such decision.

You are also requested to make me aware as to why in my case Delhi Health Services had itself constituted the medical Board for Investigating the matter and matter has not been referred to the Delhi Medical Council.

All these circumstances mentioned above are sufficient to create serious doubt as regards the action of the authority in the present matter, accordingly any alleged opinion given by you does not have any sanctity."

138. We feel that this letter was totally uncalled for. In this regard, we have also seen the letter by which the matter was referred to Directorate of Health Services. The reason for referring the matter to the Directorate of Health Services has been given as under:-

"As per the directions of Hon'ble Supreme Court of India (Bench of CGI R.C. Lahoti, G.P. Mathur & P.K. Balasubramanayan), Case No. Appeal Criminal 144-145 of 2004, date of judgement 05.8.05 and guidelines contained therein:

"Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld".

The reply of the doctors who treated the deceased patient filed by them during enquiry and a copy of the judgement of Hon'ble Supreme Court of India is enclosed herewith.

Since, as per guidelines, the Govt. doctor in Govt. services has to give an opinion on the negligence of gross nature to enable us to proceed further, it is requested that medical opinion on this complaint may kindly be accorded."

139. He has also assailed the report of the Medical Board at AIIMS "tainted and wrong" in view of the report of DMS which was upheld by MCI.

140. The High Court of Delhi in the case of ***Sanjeevan Medical Research Centre (Private) Ltd. & Ors. Vs. State Of NCT of Delhi & Anr*** [Crl.M.C.No. 2358/2010] decided on 11.2.2011, observed as under:-

> *"6. I have gone through the order of Medical Council and the same is silent about the opinions given by other two Boards and has not discussed these opinions at all. The order also does not show as to who, on behalf of Delhi Medical Council considered the issue of Medical negligence of Dr. Anupam. In any case, Delhi Medical Council has given its own reasons which are contradictory to the reasons given by the other two Boards.*
>
> *7. On medical negligence Supreme Court has laid down certain precautions to be taken while summoning doctors, in judgments Jacob Matthew v. State of Punjab (2005) 6 SCC 1, Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1 and Kusum Sharma v. Batra Hospital (2010) 3 SCC 480. The basic and underlying principle of these three judgments and other similar judgments is that every careless act of a medical man cannot be Crl.MC No.2358/2010 Page 3 of 5 termed as "criminal". It can be termed "criminal" only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. It has been emphasized by Court that mere error of judgment or an accident does not involve criminal liability or mere inadvertence or some degree of want of adequate care would not create criminal liability though it may create civil liability. It has been ruled that a private complaint may not be entertained unless complainant has produced prima facie evidence before the Court in the form of credible opinion given by another competent doctor. The investigating officer should, before proceedings against the doctor, accused of rash and negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service. It was held by Supreme Court in Martin F. D'Souza v. Mohd. Ishfaq (supra):*
>
> *106. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew case, otherwise the policemen will themselves have to face legal action."*
>
> *8. In Kusum Sharma v. Batra Hospital (supra) Supreme Court observed that negligence cannot be attributed to a doctor so long as he Crl.MC No.2358/2010 Page 4 of 5 performs his duty with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.*
>
> *9. In the present case, two Boards independent of each other; one of AIIMS and other of Directorate of Health Services have given clean chit to the petitioners. In view of opinion of two expert bodies exonerating Dr. Anupam for gross negligence and in view of Supreme*

Court holding that Court cannot be an expert in such cases and the opinion regarding medical negligence given by an independent board shall have more credibility, I consider that no useful purpose shall be served in proceeding against the petitioners."

141. The complainant no. 1 has assailed the DHS report stating that Dr. S. Bhattacherjee who was one of the members of the Statutory Board of Medical Council of India and argued that the earlier opinion given under his chairmanship on 17.2.2010 would stand overruled. We, however, are of the opinion that in the interest of proprietary and to avoid conflict of interest Dr. S. Bhattacharjee, Director of Health Services having given his report on 17.2.2010 should have recused himself from the sitting of the Board constituted to hear this matter in MCI vide order 18.5.2011. He has committed a grave error in judgment in not doing so.

142. To sum up, we are of the opinion that the complainants and more particularly complainant no.1 Dr. Satsangi has failed to prove his allegations of medical negligence against the OPs. This opinion is supported by two expert bodies, i.e., Directorate of Health Services and the Medical Board of AIIMS as also to some extent by DMC. This is a case where the complainants, parents of Rahul Satsangi who was suffering from DMD with all its attendant complications and was at the terminal stage as far back as in 2004, chose to take their son for tests, investigations, diagnosis and treatment to OP -1 where, as per available record Rahul Satsangi had never been treated either in the hospital or by OP-3 – Dr Anupam Jena. Admittedly, as on 24.10.2009 Rahul Satsangi had been ill for the last 10 to 15 days with cold and cough and intermittent fever and yet complainant no.1 while proceeding to Chandigarh to attend a medical conference instructed his wife, who suspected that their son Rahul was suffering from Pneumonia, to take him for the necessary tests and diagnosis to an unknown hospital and unknown doctors. This exhibits a lack of prudence and care which was compounded by the fact that as from the record available complainant no. 2 did not take with her any previous medical or treatment record. The mother, who was present, was not able to take decisions on her own and for all matters referred Dr. Jena to complainant no.1 who was attending a conference in Chandigarh. Even the consent form was signed by a family friend. Dr. Satsangi from the record available was supervising, directing and guiding the treatment to be given, from Chandigarh on telephone. Dr.Satsangi would have us take his words against that of Dr. Anupam Jena with regard to the advice, guidance, instructions given by him on telephone as against what is recorded in the treatment record. From the record it is not established that he had warned Dr. Jena against prescribing Ciprobid. From the record, it is also not established that he warned against prescribing IV Azithromycin and IV Levefloxacin. Complainants have failed to explain why they allowed Rahul Satsangi to be admitted in OP-1 hospital under the treatment of OP-2 when they had no prior knowledge of facilities available as also the medical personnel available and the skill and competence of doctors there. They have not explained why they did not insist that the mother, who was present with the family friend, could not take their son Rahul for a second opinion and hospitalisation if so warranted to a hospital of which they had greater personal knowledge and confidence and where the treating doctors were known and who were aware of his heart condition and who knew of Rahul Satsangi's allergies and condition of health. It was very important for the treating doctors to know the condition of the heart. The complainant would have believed that Rahul Satsangi had no serious heart condition based on the affidavit evidence of Dr. J.C. Mohan who as per his affidavit was his regular doctor and who was consulted for Rahul's cardio condition. Dr Mohan records in his affidavit as under:-

"3. That Rahul Satsangi was last seen by me in July 2009, though he was neurologically disabled but his cardiac condition was quite satisfactory with no evidence of heart failure, ventricular ectopy of left ventricular systolic dysfunction.

4. That I had never prescribed him any cardio-active drugs and to best of my memory he had never took any such drugs.

5. That on 21.3.2011 I was posted as Director & Chief of Cardiology at Ridge Heart Centre, Sundar Lal Jain Hospital, Ashok Vihar, Phase-III, Delhi – 110052 and have given a certificate with regard to the cardiac condition of Master Rahul Satsangi which bears my signature."

143. It is established that Rahul was diagnosed with Cardiomegaly as far back as in 1997 by AIIMS and yet Dr. J.C. Mohan who was his regular doctor states that his cardiac condition was satisfactory. He strangely also has to depend on his memory to state that Rahul never took any Cardio active drugs. Dr. J.C. Mohan should have given a certificate based on the medical record of treatment rather than depend on his memory to give such an affidavit. Though Dr J C Mohan had not found any structural heart disease, however, cardiomegaly (structural heart disease) has been documented as early as 1997.

144. The complainants got no post-mortem done to establish the actual cause of death and to prove beyond doubt whether it was due to drug allergy or cardio respiratory arrest due to progressive nature of DMD with pneumonia.

145. The Hon'ble Supreme Court in the case of ***Jacob Mathew (Dr) vs State of Punjab and Anr*** . – III (2005) CPJ 9 (SC) has held that:

19. *In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices. In Michael Hyde and Associates v. J.D. Williams & Co. Ltd., [2001] P.N.L.R. 233, CA, Sedley L.J. said that where a profession embraces a range of views as to what is an acceptable standard of conduct, the competence of the defendant is to be*

judged by the lowest standard that would be regarded as acceptable. (Charlesworth& Percy, ibid, Para 8.03)

22. The degree of skill and care required by a medical practitioner is so stated in Halsbury's Laws of England (Fourth Edition, Vol.30, Para 35):-

"The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.

Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care."

Above said three tests have also been stated as determinative of negligence in professional practice by Charlesworth & Percy in their celebrated work on Negligence (ibid, para 8.110)

29. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.

30. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason whether attributable to himself or not, neither a surgeon can successfully wield his life-saving scalper to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to the society.

32. The subject of negligence in the context of medical profession necessarily calls for treatment with a difference. Several relevant considerations in this regard are found mentioned by Alan Merry and Alexander McCall Smith in their work "Errors, Medicine and the Law" (Cambridge University Press, 2001). There is a marked tendency to look for a human actor to blame for an untoward event \026 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. To draw a distinction between the blameworthy and the blameless, the notion of mensrea has to be elaborately understood. 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. The inadequacies of the system, the specific circumstances of the case, the nature of human psychology itself and sheer chance may have combined to produce a result in which the doctor's contribution is either relatively or completely blameless. Human body and its working is nothing less than a highly complex machine. Coupled with the complexities of medical science, the scope for misimpressions, misgivings and misplaced allegations against the operator i.e. the doctor, cannot be ruled out. One may have notions of best or ideal practice which are different from the reality of how medical practice is carried on or how in real life the doctor functions. The factors of pressing need and limited resources cannot be ruled out from consideration. Dealing with a case of medical negligence needs a deeper understanding of the practical side of medicine.

49 (1) We sum up our conclusions as under:-

(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. The definition of negligence as given in Law of Torts, Ratanlal&Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. 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 are three: 'duty', 'breach' and 'resulting damage'.

51. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes such prosecutions are filed by private complainants and sometimes by police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

52 We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasize the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a

complainant prefers recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

53. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

146. In the case of ***Kusum Sharma & Ors vs Batra Hospital and Medical Research Centre and Others*** *– 2012 (2) R C R (Civil) 161, the Hon'ble Supreme Court while deciding whether the medical professional is guilty of medical negligence held that following well known principles must be kept in view:*

I. Negligence is the breach of a duty exercised 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.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

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

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the 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.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

147. The Hon'ble Supreme Court in the case of ***Martin F D'Souza vs Mohd Ishfaq*** - (2009) 3 Supreme Court Cases 1 decided on 17.02.2009 has held that:

> *"In para 52 of Jacob Mathew case, the Supreme Court realising that doctors have to be protected from frivolous complaints of medical negligence, has laid down the following rules:*

i. *A private complaint should not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial opinion applying the Bolam test.*
ii. *A doctor accused of negligence should not be arrested in a routine manner simply because a charge has been levelled against him. Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that*

the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest should be withheld.

Jacob Mathew vs State of Punjab (2005(6 SCC 1: 2005 SCC (Cri) 1369, reiterated

Therefore, it is directed that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or the Cirminal Court should first refer the matter to a competent doctor or committee of doctors, specialised in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the doctor/ hospital concerned. This is necessary to avoid harassment to doctor who may not be ultimately found to be negligent. Further, the police officers are warned not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew case otherwise the policeman will themselves have to face legal action.

The courts and the Consumer Fora are not experts in medical science, and must not substitute their own views over that of specialists. It is true that the medical profession has to an extent become commercialised and there are many doctors who departs from their Hippocratic oath for their selfish ends of making money. However, the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad apples.

General Principles Relating to Medical Negligence

31. As already stated above, the broad general principles of medical negligence have been laid down in the Supreme Court Judgment in Jacob Mathew vs. State of Punjab and Anr. (supra). However, these principles can be indicated briefly here :

The basic principle relating to medical negligence is known as the BOLAM Rule. This was laid down in the judgment of Justice McNair in Bolam vs. Friern Hospital Management Committee (1957) 1 WLR 582 as follows:

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

Bolam's test has been approved by the Supreme Court in Jacob Mathew's case.

32. In Halsbury's Laws of England the degree of skill and care required by a medical practitioner is stated as follows:

"35. Degree of skill and care required - The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care.

Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.

Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care."

(emphasis supplied)

33. Eckersley vs. Binnie (1988) 18 Con LR 1 summarized the Bolam test in the following words:

"From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in the knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of a polymath and prophet."

34. A medical practitioner is not liable to be held negligent 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. He would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. For instance, he would be liable if he leaves a surgical gauze inside the patient after an operation vide Achutrao Haribhau Khodwa & others vs. State of Maharashtra & others, or operates on the wrong part of the body, and he would be also criminally liable if he operates on someone for removing an organ for illegitimate trade.

35. There is a tendency to confuse a reasonable person with an error free person. An error of judgment may or may not be negligent. It depends on the nature of the error.

36. It is not enough to show that there is a body of competent professional opinion which considers that the decision of the accused professional was a wrong decision, provided there also exists a body of professional opinion, equally competent, which supports the decision as reasonable in the circumstances. As Lord Clyde stated in Hunter vs. Hanley:

"In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man clearly is not negligent merely because his conclusion differs from that of other professional men.... The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care...."

(emphasis supplied)

40. Simply because a patient has not favourably responded to a treatment given by a doctor or a surgery has failed, the doctor cannot be held straightway liable for medical negligence by applying the doctrine of res ipsa loquitur. No sensible professional would intentionally commit an act or omission which would result in harm or injury to the patient since the professional reputation of the professional would be at stake. A single failure may cost him dear in his lapse.

41. As observed by the Supreme Court in Jacob Mathew's case: (SCC pp. 22-23, paras 28-29)

28. "A medical practitioner faced with an emergency ordinarily tried his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.

29. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason-whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving does of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society"

42. When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.

100. We have carefully perused the judgment of the National Commission and we regret that we are unable to concur with the views expressed therein. The Commission, which consists of laymen in the field of medicine, has sought to substitute its own views over that of medical experts, and has practically acted as super-specialists in medicine. Moreover, it has practically brushed aside the evidence of Dr. Ghosh, whose opinion was

sought on its own direction, as well as the affidavits of several other doctors (referred to above) who have stated that the appellant acted correctly in the situation he was faced with.

101. The Commission should have realized that different doctors have different approaches, for instance, some have more radical while some have more conservative approaches. All doctors cannot be fitted into a straight-jacketed formula, and cannot be penalized for departing from that formula.

102. While this Court has no sympathy for doctors who are negligent, it must also be said that frivolous complaints against doctors have increased by leaps and bounds in our country particularly after the medical profession was placed within the purview of the Consumer Protection Act. To give an example, earlier when a patient who had a symptom of having a heart attack would come to a doctor, the doctor would immediately inject him with Morphia or Pethidine injection before sending him to the Cardiac Care Unit (CCU) because in cases of heart attack time is the essence of the matter. However, in some cases the patient died before he reached the hospital. After the medical profession was brought under the Consumer Protection Act vide Indian Medical Association vs. V.P. Shantha doctors who administer the Morphia or Pethidine injection are often blamed and cases of medical negligence are filed against them. The result is that many doctors have stopped giving (even as family physicians) Morphia or Pethidine injection even in emergencies despite the fact that from the symptoms the doctor honestly thought that the patient was having a heart attack. This was out of fear that if the patient died the doctor would have to face legal proceedings.

103. Similarly in cases of head injuries (which are very common in road side accidents in Delhi and other cities) earlier the doctor who was first approached would started giving first aid and apply stitches to stop the bleeding. However, now what is often seen is that doctors out of fear of facing legal proceedings do not give first aid to the patient, and instead tell him to proceed to the hospital by which time the patient may develop other complications.

104. Hence Courts/Consumer Fora should keep the above factors in mind when deciding cases related to medical negligence, and not take a view which would be in fact a disservice to the public. The decision of this Court in Indian Medical Association vs. V.P. Shantha (Supra) should not be understood to mean that doctors should be harassed merely because their treatment was unsuccessful or caused some mishap which was not necessarily due to negligence. In fact in the aforesaid decision it has been observed (vide para 22) :- (V P Shantha case SCC P 665)

"22. In the matter of professional liability professions differ from other occupations for the reason that professions operate in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional man's control."

106. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the Criminal Court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or Criminal Court should first refer the matter to a competent

doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew's case otherwise the policemen will themselves have to face legal action.

111. The courts and Consumer Fora are not experts in medical science, and must not substitute their own views over that of specialists. It is true that the medical profession has to an extent become commercialized and there are many doctors who depart from their Hippocratic oath for their selfish ends of making money. However, the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad apples.

112. It must be remembered that sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held to be guilty of medical negligence, unless there is some strong evidence to suggest that he is."

148. In view of the above, we are of the opinion that the complainants have failed to prove their allegations of medical negligence against the opposite parties. Two expert medical Boards have also found no evidence of medical negligence. The High Court in the case of ***Sanjeevan Medical Research Centre (Private) Ltd. & Ors. Vs. State Of NCT of Delhi & Anr*** [Crl M C No. 2358/2010] vide their order dated 11.02.2011 had concluded that, "no useful purpose shall be served in proceeding against the petitioner" based on the opinion of the expert bodies exonerating Dr Anupam for gross negligence and in view of Supreme Court holding that a court cannot be an expert in such cases and the opinion regarding medical negligence given by an independent Board shall have more credibility. The complaint is hence dismissed as the complainants have failed to establish that the OPs were guilty of medical negligence.

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AJIT BHARIHOKE
PRESIDING MEMBER

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REKHA GUPTA
MEMBER