

Doctors, a judgement of your interest...

1. It should be borne in mind that, any neurosurgery is a major surgery, which involves high risk; Thus no doctor will give assurance to the patient.
2. It will be illogical to think, that the cardiac surgeon performs a by-pass (CABG) without discussing with patient about risks and benefits of CABG procedure. Thus, similarly in this instant case (of Neurosurgery), the Doctor certainly had discussion with the patient about the surgery, thus it was an oral informed consent.
3. The complainant was not a lay person, the duty of prudence and care was also casted upon him. It was a planned surgery and there was no force from the Doctor for the patient to undergo surgery."
4. The Commission further observed that incomplete or not correctly filled consent form (in the instant case failure to mention name of the Doctor) for surgery, appears to be a mere omission and not a major negligence in this case.

The National Commission in its judgment dated 19th March, 2015 in the case of VIMHANS HOSPITAL & ANR, New Delhi V/s. ANAND KUMAR JHA & ORS, have observed as above on facts of the case.

<http://cms.nic.in/ncdrcusersWeb/GetJudgement.do...>

The Factual Matrix:

Smt. Meera Jha, the patient (since diseased), the Mother of the complainant was admitted in the Hospital for the 4 years complaint of neck pain. Later on the patient was diagnosed as a case of Cranio-Vertebral Junction Anomaly i.e. Atalanto Axial Dislocation (AAD). However, after the operation, the intended results did not show and the patient became paralysed and later on succumbed to death and the Complainant alleged that it so happened because of unhygienic conditions in the Hospital and lack of Post-Op care and and he was never informed about the treatment and its effects etc. & therefore filed a case for damages and was awarded Rs.5 lacks compensation by District as well as State Forums.

The National Commission while observing the above points 1, 2, 3 & 4 allowed the Appeal of Doctors and hospital and negated the allegations of Medical Negligence. The Commission after going through the Medical Records and reports of Experts observed that the Decision to operate was taken after necessary investigation and as per the clinical history the patient was suffering from pain and altered sensations and quadri-paresis and steroid induced psychosis and superficial wound infection are the known complications and sequel of surgery.

It relied upon the celebrated judgment of Apex Court in the case of Samira Kohli vs. Dr. Prabha Manchanda & Anr., (2008) 2 SCC 1, the relevant paras are as follows;

(i) A doctor is not negligent, if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art.

Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view. At the same time, that does not mean that a medical man can obstinately and pig-headedly carry on with some old technique if it has been proved to be contrary to what is really substantially the whole of informed medical opinion.

(ii) When a doctor dealing with a sick man strongly believed that the only hope of cure was submission to a particular therapy, he could not be criticized if, believing the danger involved in the treatment to be minimal, did not stress them to the patient.

(iii) In order to recover damages for failure to give warning the plaintiff must show not only that the failure was negligent but also that if he had been warned he would not have consented to the treatment.

*Thus the Revision was allowed, however taking lenient view the Doctors were asked to pay **Rs.50,000/-***

This case again emphasis the importance of Informed Consent!!

Even though in present case there were some technical errors which were exempted, but that does not mean every time the Doctors can be saved on such grounds, so be always careful.

Few minutes for proper filling of forms and explanation to the Patient and its documentation can save Doctors from future mental pain and agony!!!