

"Ultra Patient Doctor ko Daate"

The patient lost his leg due to primary "treatment" by a quack, but the buck was shifted on the Doctors for Medical Negligence, but fortunately in vain.

PRAYAG HOSPITAL & RESEARCH CENTER PVT. LTD. & ANR. V/s. VIJAY PAL. REVISION PETITION NO. 293 OF 2012. Decided By National Commission on 8th February, 2016.

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

Facts in short:

The Complainant, a Milk Man, got grievously hurt due to attack by the buffalos and suffered injuries on his left leg and foot and he was admitted in the Hospital, where he alleged that the treatment received was bad and improper and as a result of which, his condition deteriorated and ultimately, amputation had to be done. Hence he filed a claim of **Rs. 5 lakhs** against Doctors and Hospital. His complaint was allowed by the lower forums and hence the Revision.

The Doctors contended that the Complainant after the said attack instead of coming to proper Doctor, Complainant had gone to some Quack who had tied bamboo-sticks to the injured leg. After examining the patient it was revealed that there was no sensation of deep prick, pressure, cut or heat application much less a neurological sensation and the leg had turned bluish. It was also recorded in the Medical Records and initially the patient was advised for amputation, but subsequently, a conservative surgical line of treatment (Fasciotomy) was adopted. After about 48 hours, there were signs of revival in some of the muscles, but the nervous system did not work at all, even after six weeks. Therefore after taking written consent, the amputation was done.

The National Commission held:

The onus of proof primarily lies upon the Complainant to prove the medical Negligence and once initial burden had been discharged, the onus of proof would shift to the Doctors. But in the present case complainants have not been able to provide any material to prove the allegation of medical negligence. It was proved that the Patient did not go to Doctors immediately after the accident, but to some local Doctors.

It relied upon the famous judgment of 'Jacob Mathew vs. State of Punjab and others' (2005 (6) SCC 1), wherein the Hon'ble Apex Court, interalia, stated as follows:-

A professional may be held liable for negligence on one of the 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 possible for every professional to possess the highest level of expertise or skills in that branch which he practices.

A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

Again, the proper documentation has saved the Doctors... There is no excuse for proper documentation.