



MEDICAL NEGLIGENCE

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Medicine is a Science of
Uncertainty and an Art of
Probability

Osler

NRI doctor gets 1 crore compensation for wife's death

[Press Trust of India](#), October 21, 2011

- **New Delhi:** Awarding a record compensation in a medical negligence case, the country apex consumer panel has directed that a US-based Indian origin doctor be paid Rs 1.73 crore for the death of his wife while undergoing treatment at a prominent hospital in Kolkata in 1998.

The National Consumer Dispute Redressal Commission (NCDRC) asked three Kolkata doctors and the Advanced Medicare and Research Institute (AMRI) to share the compensation amount.

An NCDRC bench of Justice R C Jain fixed the compensation on a direction by the Supreme Court, which had referred US Doctor Kunal Saha's appeal to it while holding the three doctors and the hospital culpable to civil liability for medical negligence which had led to the death of his wife Anuradha, herself a child psychologist, in 1998, when she was in the city on a summer vacation.



- The Supreme Court had asked NCDRC to determine the compensation amount for Saha, who is working as an HIV-positive/AIDS researcher.

The Supreme Court, in May 2009, had awarded the highest ever compensation of Rs one crore to a wheelchair-bound Infosys engineer Prashant S Dhananka for medical negligence in a surgery by Hyderabad's Nizam Institute of Medical Sciences (NIMS) which damaged his spinal chord. He died in June this year.

While pegging the compensation due to Saha for his wife's death at Rs 1,72,87,500, the NCDRC also held the US doctor responsible for contributing to the negligence committed by the three Kolkata doctors and the hospital and ordered 10 per cent deduction in the amount of compensation.

- At least 85 doctors have been charged with manslaughter or "criminal negligence" (not a single case from India) up to the year 2005. Almost 30% were convicted (37 out of 85), mostly for "medical mistakes". 16 of these cases were charged for violations in which there is a "deliberate deviation from safe practices" and 10 of them (60%) were convicted. A copy of this published study from UK is attached. The performance of the UK Medical Council (GMC), as recently submitted by Dr. Vivek, should also be an eye-opener for the doctors in India. The picture for stringent actions against the errant medicos is no less severe in the US as anybody can find from the website of any of the 50 state medical boards in US (unlike the GMC in UK, each state of US has complete authority to regulate practice of medicine in the state).
- While the number of criminal prosecution of doctors in the US is far less compared to the enormous number of civil cases against doctors, filed mostly by the over-zealous lawyers, more than two dozens of criminal cases against doctors for malpractice can be traced in the US between 1981 and 2001. A recent analysis by Reuters has found 37 criminal cases for medical malpractice against doctors in US in the decade between 2001 and 2011. In addition, the US Drug Enforcement Agency reported 15 physicians arrest in 2003 that resulted in conviction. That number has grown to 43 in 2008, the most recent year for which complete data is available. This report can be viewed at <http://www.reuters.com/article/2011/09/14/us-jackson-malpractice-idUSTRE78D3P620110914> .

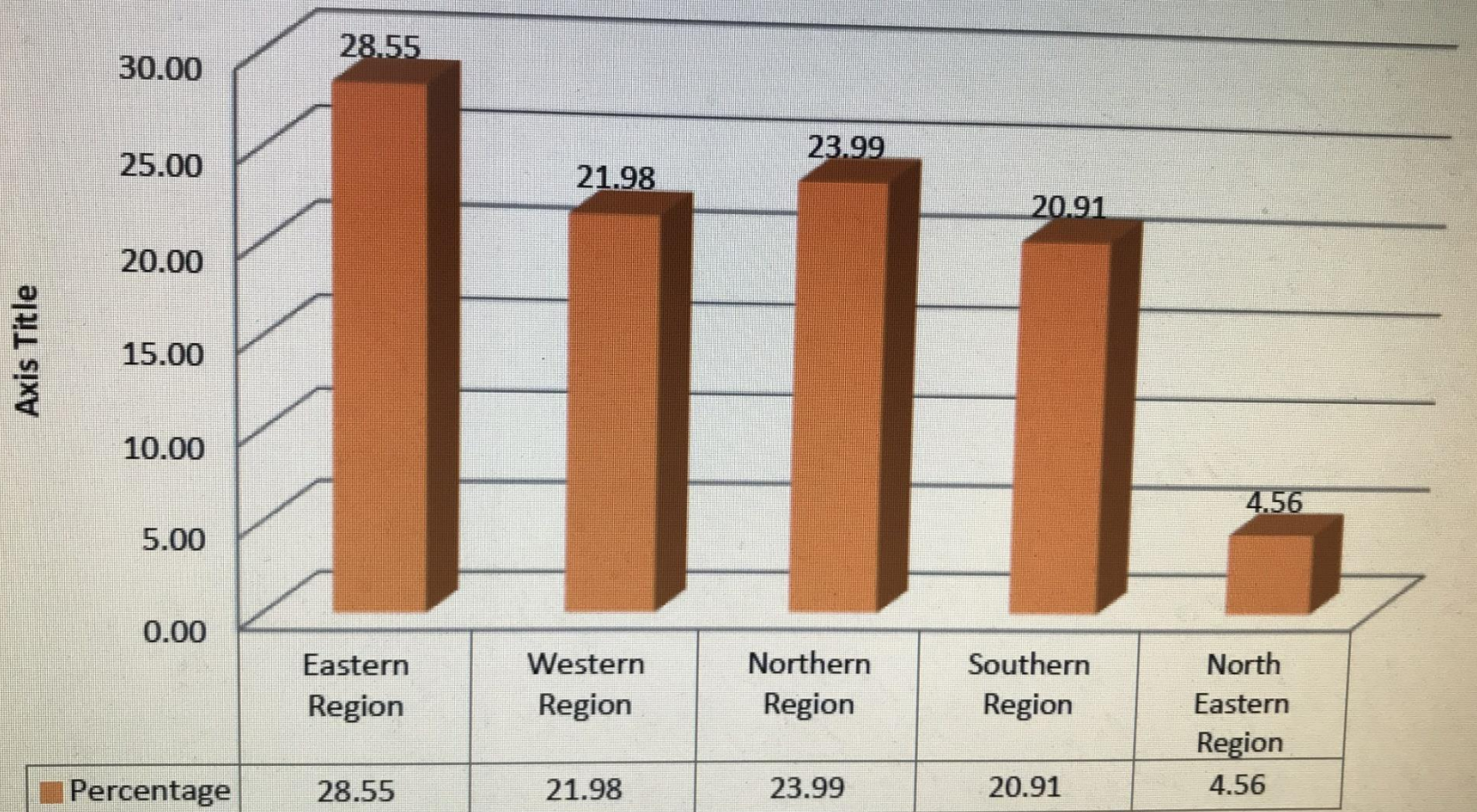
- Rather than chastising the NRI doctors in the name of patriotic sentiments for our motherland, Indian medicos would be better advised to first educate themselves for an honest and impartial introspection to cure the seriously ailing healthcare system in India. There can no dispute that rampant corruption and lack of proper regulation of the medical system in India are resulting in countless injuries and deaths of the defenseless children of Mother India (patients) in hospitals and nursing homes across the nation every day - most of these poor and hapless Indian patients perhaps never even realize that their loved one actually fell prey to gross "medical mistakes" and/or "deliberate deviation from safe practices".
- Dr. Kunal Saha, President, PBT

Incidence of Criminal Medical Negligence in India

Zonal Distribution from 2017 to 2020

S.No.	Region	2017	2018	2019	2020	Total	Percentage
1	Eastern Region	54	84	61	14	213	28.55
2	Western Region	38	39	48	39	164	21.98
3	Northern Region	39	51	52	37	179	23.99
4	Southern Region	48	37	43	28	156	20.91
5	North Eastern Region	15	4	4	11	34	4.56
	Grand Total	194	215	208	129	746	100.00
Source	Compiled from NCRB Report 2017, 2018, 2019, 2020						

Incidence of Criminal Medical Negligence 2017-2020



As evident from above Table and Bar Diagram highest number of alleged criminal medical negligence cases reported from Eastern Zone i.e. 215 (28.55%; n=756) from 2017 to 2020 as reported by National Crime Record Bureau Reports 2017 to 2020 respectively. Lowest number of alleged criminal medical negligence cases reported from North-Eastern Zone i.e. 34 (4.56%; n=756).



Medical Negligence

Definition- “Negligence is the breach of duty caused by; the omission to do something which a reasonable men, 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”.

Baron Anderson

Medical Negligence

Other terminologies used for Medical Negligence are:

Medical malpractice or malpraxis- is a broader term meaning bad professional work.

All medical negligence are medical malpractice but all medical malpractice may not amount to medical negligence

ESSENTIAL CONDITIONS OF NEGLIGENCE

- **Dangerous 4 D's:**

1. **D**uty of care;

2. **D**ereliction/ breach of duty;

3. **D**amages suffered by patient; and

4. **D**irect causation due failure to exercise reasonable care & skill.

TYPES OF MEDICAL NEGLIGENCE

Traditionally classified based on degree and kind of negligence as:

Civil- act toward the patient is wrong to the extent that can be compensated monetarily

Criminal- act is of gross negligence showing utter disregard to the life and safety of the patient, that can not be compensated

REDRESSAL OF GRIEVANCE FOR MEDICAL NEGLIGENCE

- Consumer Protection Act, 1986
- Civil courts
- Criminal courts- Under Sections 304A,284, 337,338 etc. IPC
- MCI/DCI

MEDICAL ERRORS- PREVALENCE

BMJ, March 2000

Place of Study	Year	Total Cases Reviewed	Prevalence Rate
New York	1984	30,121 (51 hospitals)	3.7% of admissions
Australia	1995	14,179 (28 hospitals)	16.6% of admissions

MEDICAL ERRORS- PREVALENCE

BMJ, March 2000

- In US- medical errors results in 50,000-1,00,000 unnecessary deaths and ~1 million excess injuries every year
- In Australia medical errors results in about ~18,000 unnecessary deaths and ~50,000 disabilities each year

DEATHS DUE TO MEDICAL NEGLIGENCE

In US, ~1,50,000 deaths occurs due to medical negligence annually which is 5 times of total deaths due to firearm weapons

Source: Harvard medical practice study & FBI Uniform crime report, 1990.

DOMAINS OF MEDICAL NEGLIGENCE

- Consent
- Professional secrets
- Treatment by ill trained
- Mistaken diagnosis
- Injections/ Drug reactions
- Pre-operative & Operative
- Blood grouping/transfusion
- Anesthesia
- Post-operative/ procedural
- Retained articles
- Mortality/ DOT
- Abandonment
- Accidents/ Emergency

SC JUDGMENTS ON MEDICAL NEGLIGENCE

1. Dr. Suresh Gupta vs Govt. of NCT of Delhi and others (2004) 6 SCC 422
2. Syed Kabar vs State of Karnataka (1980) 1 SCC 30
3. Krishna and others vs State of Kerala (1996) 10 SCC 508
4. Kishan Chand and others vs State of Haryana (1970) 3 SCC 904

SC JUDGMENTS ON MEDICAL NEGLIGENCE

5. Achutrao Haribhau Khod and other vs State of Maharashtra and others (1996) 2 SCC 634
6. M/s Spring Meadows Hospital and others vs Harjot Ahluwalia and others (1998) 4 SCC 39
7. State of Haryana vs Smt. Santra (2000) 5 SCC 182
8. Martin F.D'Souza v.Mohd. Ishfaq, (2009) 3 SCC 1

LATEST LEGAL STATUS

Jacob Mathew v/s State of Punjab (Cr. Apl. 144-145 of 2004) Judgment dated Aug.5,2005 (salient features):

*There exists a clear distinction between “simple lack of care” incurring civil liability and “very high degree of negligence” which is required in criminal cases.

LATEST LEGAL STATUS

- In civil cases mere preponderance of probability is sufficient, but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convince the mind of Court, as reasonable man, beyond all reasonable doubt.
- In criminal cases the negligence must be culpable or gross and not merely based upon an error of judgment.

LATEST LEGAL STATUS

- A professional may be held liable for negligence on one of two findings: either he was not possessed of requisite skill which he professed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.
- SC again accepted **Bolam Test** as the guiding principle for standard of care to judge the action of the doctor in question.

LATEST LEGAL STATUS

- A mere deviation from normal professional practice is not necessarily evidence of negligence
- A mere accident is not evidence of negligence
- *Res ipsa loquitor* is a rule of evidence which in reality belongs to law of torts
- A case under 304A IPC cannot be decided solely by applying the rule of *res ipsa loquitor*
- For a medical accident or failure, the responsibility may lie with the medical practitioner and equally may not

LATEST LEGAL STATUS

- The criminal law has invariably placed the medical professional on a pedestal different from ordinary mortals
- Negligence in context of medical profession necessarily calls for a treatment with a difference
- Indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to the society

LATEST LEGAL STATUS

- For negligence to amount to an offence, the element of mens rea must be shown to exist
- The expression ‘rash and negligent act’ as occurring in Section 304A IPC has to be read as qualified by word ‘grossly’

Martin F.D'Souza v.Mohd. Ishfaq, (2009) 3 SCC 1

- SC 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 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.

Martin F.D'Souza v.Mohd. Ishfaq, (2009) 3 SCC 1

- 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 (*supra*), otherwise the policemen will themselves have to face legal action.

Bolam Vs Bolitho Test

- “In the ordinary case which does not involve any special skill, negligence in law means a failure to do some act which a reasonable man in the circumstances would do, or the doing of some act which a reasonable man in the circumstances would not do; and if that failure or the doing of that act results in injury, then there is a cause of action. Thus, the understanding of negligence hinges on the ‘reasonable man’”.

Bolitho In India

- The Bolitho test has been mentioned in the Indian Supreme Court on only two occasions. It was stated in *Samira Kohli v Prabha*, where the court clearly pointed out that "A beginning has been made in *Bolitho v City and Hackney* and *Pearce v United Bristol Healthcare*. We have however, consciously preferred the 'real consent' concept evolved in *Bolam*." Similar was the case in *Vinitha Ashol v Lakshmi Hospital* where the court did not look into the test at all. In *Vinitha Ashok vs. Lakshmi Hospital*, this Court after referring to *Bolam*, *Sidaway* and *Achutrao*, clarified: "A doctor will be liable for negligence in respect of diagnosis and treatment in spite of a body of professional opinion approving his conduct where it has not been established to the court's satisfaction that such opinion relied on is reasonable or responsible. If it can be demonstrated that the professional opinion is not capable of withstanding the logical analysis, the court would be entitled to hold that the body of opinion is not reasonable or responsible".

GUIDELINES: REGARDING PROSECUTING MEDICAL PROFESSIONALS

- A private complaint may not be entertained unless the complainant has 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 and 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

GUIDELINES: REGARDING PROSECUTING MEDICAL PROFESSIONALS

- A doctor accused of rashness or negligence, may not be arrested in routine manner, unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the I.O. feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested

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National Medical Commission

ETHICS & MEDICAL REGISTRATION BOARD

NMC/MCI/EMRB/C-12015 /0023 /2021/ETHICS/०२२५२६ Date: २९/९/२०२१

The Secretary
Ministry of Health & Family Welfare
Nirwan Bhawan, A-Wing
Maulana Azad Road, New Delhi -110077

Sub:- Regarding specific directions issued by the Hon'ble Apex Court to fr
specific "guidelines " needed for prosecution of doctors for causing death
innocent patients due to gross medical negligence or reckless therapy.

Sir,

Please refer to your letter no. Nil dated 02.03.2021 received in this office dated 15.03.2021
filed by Dr. Kunal Saha, President PBT, on the subject cited above

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

Mistaken Diagnosis

1. Navneethan vs Dr. Rathinasamy (TNSCRC, 1991)

Allegation of torsion testis being diagnosed as acute epididymo-orchitis

No negligence held

2. P.L.Verma vs Dr. A.K.Gupta (Haryana SCRC, 1993)

Allegation of missing diagnosis of Ca. Prostate on histopathology

No negligence held

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

3. Mrs. Shanti Shridharan vs Sentinel scan (TNSCRC,1998)

Failure to diagnose congenital absence of hand in 3 successive US scans

Negligence held

Injection related

1. Khairati Lal vs Kewal Krishan (Punjab SCRC, 1998)

Gangrene following injection –amputation of fingers- injection in artery

Negligence held

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

2. A.N.Methew vs Director, Karuna hospital (Kerala SCRC,1998)

Nerve palsy following injection by nurse- hospital liable vicariously

Compensation awarded

3. H. L.Solanki vs Dr. Suresh Parekh (Guj SCRC,1994)

Death following injection Baralgan- P.M.inconclusive

Negligence not proved

4. Spring Meadows hospital vs Harjot Ahluwalia (SC 1998)

Inj chloroquine I.V. to a child instead of chloromphenicol- cardiac arrest-
went into vegetative state

Negligence held- awarded 17.5 lacs compensation

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

Drug reactions

1.K.B.Kamble vs Dr. U.A.Patil (Mah SCRC, 1998)

Drug reaction- Stevens Johnson Syndrome following ampicillin

Negligence not proved

2. J.M.Padiya vs Dr. L.P.Trivedi (Guj. SCRC,1998)

Stevens Johnson Syndrome following bactrim, PCM,CPM-referred to Pediatrician- delay in treatment by pediatrician

Negligence for delay in treatment

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

Surgery related

1. Christian medical centre vs A. Shajahan (APSCRC, 1995)

Cataract extraction done in a diabetic- with pre-operative
Blood Sugar testing

Negligence held

2. Dr. S. Lourie vs K. Pathumma (NCRC, 1993)

Death of mother and child during labor- allegation of not
attending properly after induction of labor

Negligence held

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

3. Dr. R.B.Fadnavis vs Mumbai Grahak Panchayat
(NCRC,1998)

Death during hysterectomy in an obese patient- lack of facilities and anticipating complications in an obese patient

Negligence held

4. Joseph @ Animon vs Dr. A. Zachariah
(KeralaSCRC,1997)

Death several days after CS- Multiple organ failure-infection

No negligence held

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

5. Renu Jain vs Escorts Heart Institute (NCRC,1992)

Death following CABG- allegation of negligent discharge- leading to infection- expert evidence proved death due to brain stem hemorrhage- no autopsy

No negligence held

6. H.S.Sharma vs Apollo Hospital (NCRC,2007)

Infection following eye surgery-allegation of delay in attending for 2 days post-operative- prescription on phone- lost an eye

Negligence held- 2 lacs compensation

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

Anesthesia related

1. Smt. N.R.Parab vs Dr. Kalpana Desai (Mah SCRC,1998)

Vegetative state following cardiac arrest during spinal anesthesia for CS

No negligence held

2. Smt. Kulwinder Kaur vs Dr.K.K.Makkar (Puj.SCRC,1997)

Meningitis following spinal anesthesia

No negligence held

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

Blood grouping/ Transfusion related

1. A.Narain Rao vs Dr. G.Ramakrishna Reddy (NCRC,1993)

Supply of infected blood-leading hepatitis B-could not be proved

No negligence held

2. S.Iqbal Khan vs Child Trust hospital (TNSCRC,1994)

Transfusion of AB+ blood with out cross matching

No negligence held- Non-availability of B+, urgent life saving

SOME CIVIL COURT/ CONSUMER COMMISSION JUDGMENTS

Left behind/ Retained articles

1.Smt.A. Verghese vs Dr.V. Verghese (Kerala SCRC,1997)

Surgical sponge left during CS

Negligence held

2. Smt. Madhuri vs Dr.Rajendra (NCRC,1996)

Artery forcep left behind during CS

Negligence held

SC ON MEDICAL NEGLIGENCE

“It is great mistake to think that doctors and hospitals are easy targets for dissatisfied patients. It is indeed very difficult to raise an action of negligence. Not only there are practical difficulties in linking the injury sustained with the medical treatment but also it is still more difficult to establish the standard of care in medical negligence on which a complaint can be made”

Spring Meadows Hospital vs Harjot Ahluwalia SC
1998(1) CPR

PRECAUTIONS AGAINST NEGLIGENCE

- Use reasonable care and skill
- Written Informed consent
- Qualified sub ordinate staff and functional equipment
- Regular update of knowledge and skills
- Indemnity insurance
- Good communication skills
- Functional patients grievance redressal mechanism
- Proper record keeping

DEFENCES AGAINST NEGLIGENCE

- Actual denial
- Contributory negligence
- Therapeutic misadventure
- Inherent risk (*Volenti non fit injuria*)
- Emergency situation
- Known complication
- Error of judgment
- “*Res Judicata*”
- Counter suit
- Limitation period- 2 years in civil cases
- Free service (Under CPA)

“THE LAW MAY BE AN ASS,
BUT MORE OFTEN IT MAKES
AN ASS OUT OF THOSE WHO
CIRCUMVENT IT”

JUSTICE JOHN UNDERWOOD

There is tendency to confuse the reasonable person with the error-free person. While nobody can avoid errors on the basis of simply choosing not to make them, people can choose not to commit violations. A violation is culpable

Errors, Medicine and the Law

**Martin F.D'Souza v.Mohd. Ishfaq,
(2009) 3 SCC 1**

The law, like medicine, is an inexact science. One cannot predict with certainty an outcome of many cases. It depends on the particular facts and circumstances of the case, and also the personal notions of the Judge concerned who is hearing the case.

Thanks for *Active Participation*