Date of pronouncement:-13.11.2026

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

FIRST APPEAL NO.04 OF 2021

(Against the Order dated 27.10.2020 in CC No.354/2018 of the State Consumer Disputes Redressal Commission Punjab)

1. Liver and Digestive Diseases Centre, H. 12/16, The Mall, (Opp. SSP House), Amritsar., Through Dr Harpreet Singh.

2. Dr. Harpreet Singh C/o Dr. Harpreet Singh, LDDC, H. 12/16, The Mall, (Opp. SSP House), Amritsar

..... Appellants

Versus

1. Loveleen Kaur w/o Late Shri Iqbal Singh, resident of Village Niranjanpur Fattuwal, Post Office Khichian, Tehsil Baba Bakala, District Amritsar

2. Oriental Insurance Company Limited, Dwarka Deesh Complex, Queen's Road, Amritsar-143001 through its Manager/ Branch Manager.

….. Respondents

BEFORE:
HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), PRESIDING MEMBER
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

Appearance at the time of arguments:-

For the Appellants : Mr. Jatinder Nagpal, Advocate (VC)

For the Respondents : Mr. Akhilesh Vyas, Advocate for R-1
Mr. Rajesh K. Gupta, Advocate (VC) for R-2

JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

ORDER

1. Appellants assail Order dated 27.10.2020 passed by Ld. State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the State Commission), whereby the Complaint filed on behalf of Respondent No. 1 (Complainant), was allowed thereby holding Appellant No. 1 (OP-1 Liver and Digestive Diseases Centre), Amritsar and Appellant No. 2 (OP-2 Dr. Harpreet Singh) liable to pay compensation to the Complainants on account of negligence in providing treatment to deceased Iqbal Singh (husband of the Complainant) as under:-

> *"i)* ***to pay ₹40,00,000/- (Rupees Forty Lakh only) in lump sum, as compensation, on account of deficiency in*** *service and medical negligence in giving treatment to the patient; including the expenses incurred on his treatment in opposite party No.1-Hospital and Fortis Escorts Hospital along with interest at the rate of 7% per annum from the date of filing of this complaint i.e. 2.5.2018 till payment, and*
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> *ii) to pay ₹33,000/- (Rupees Thirty Three Thousands only) towards litigation costs.*
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> *It is made clear that the liability of opposite party No.3-the Oriental Insurance Company Limited towards opposite party No.2-Dr. Harpreet Singh shall be as per the terms and conditions of the insurance policy."*

Appellants and Respondents are hereinafter referred to as Complainant and Opposite Parties respectively as appearing in the Complaint, for sake of convenience.

2. In brief, as per the case of Complainant, husband of the Complainant, namely Iqbal Singh (hereinafter referred to as the 'patient') was admitted by Dr. Harpreet Singh (OP-2) in Liver and Digestive Disease Centre on 02.08.2017, as he suffered some problem in abdomen. After admission patient complained of Epigastric pain and abdomen heaviness for past three days on which he was admitted in ICU. On admission it was observed that patient had no problem of HTM and Thyroid. As per the Complainant, condition of the patient was not critical at the time of admission, but after admission since Dr. Harpreet Singh (OP-2) left out of station, the treatment of patient was ignored.

3. It is further the case of Complainant that as per CT Scan report dated 03.08.2017 conducted at Dhillon C.T. Scan Centre the problem in pancreas had aggravated as there was bilateral Plural Effusion with Basal Atelactatic changes. Further the findings were suggestive of "*Subacute Interstitial Edematous Pancreatitis with*

Peripanceartic fluid Collection as Described and Pockets of Intraperitoneal Collections Grade-E with Severity Index of 6-7."

As per the Complainant, Patient was not provided with necessary treatment for kidney-related issues despite the fact that the Blood Urea was 151 mg and S. Creatinine was raised to 4.7 mg% on 03.08.2017. The level of HB, TLC/DLC were also fluctuating. The condition of patient is stated to have worsened as he was left unattended at the mercy of the nurses. The diagnostic reports on 06.08.2017 thereafter reflected S. Bilirubin at raised level of 2.16, with Pancreatic Function of S Amylase as 225.0 s/unit, which was also on higher side. Ultimately the patient was referred and transferred to Fortis Escorts Hospital on 08.08.2017 wherein he expired on 09.08.2017.

4. As per the Complainant, the cause of death recorded by Fortis Escorts Hospital is acute kidney disease and acute Pancreatics. The death of patient is claimed to have been aggravated on account of mishandling and improper treatment given by OP-2 at OP-1 Centre. Complaint was accordingly preferred by the Complainant before Ld. State Commission seeking compensation of

Rs.40,00,000/- along with refund of amount of the bills with interest and compensation.

Stand Taken on behalf of OPs

5. Allegations of medical negligence were refuted on behalf of OPs. OP-2 Dr. Harpreet Singh claimed that he was a renowned Gastroenterologist in Amritsar with about 35 years of experience. It was pointed out that OP-2 had obtained a Professional Indemnity Policy from Oriental Insurance Co. Ltd. for the period 06.02.2018 to 05.02.2019.

OPs further stated that deceased Iqbal Singh aged about 33 years was alcoholic and had been transferred from Beas Charitable Hospital in the evening of 02.08.2017 with diagnosis of Acute Pancreatitis and history of pain in epigastrium with radiation to back for the last three days. Patient was further stated to be having history of heavy alcohol '+ +' for about two years and was suffering from seizures for the last three years prior to admission. He was also under medication of 'paroxetine' and 'pregabalin'.

It is further the defence of OPs that the patient was transferred to ICU after admission after seeking written consent from his relatives. It is pointed out that investigations conducted at Beas

Hospital prior to admission at OP-1 Centre showed high TLC (17600), raised creatinine (5.8 mg%), urea (63 mg%), SGOT/SGPT (79/52 I.U.), Serum protein (7.3, Albumin) level (3.3 grams) and high S. Amylase level at 2871 I.U. OPs further stated that relevant tests reflected Acute Pancreatitis, ALD (Alcoholic liver Disease), B/L pleural Effusions Ascites. Further the condition of the patient was explained to the attendants for admission in ICU and was managed with I/V fluids, Central line, Antibiotics for infection and analgesics for pain and soda bicarb as the patient was in acute pain, shock with low CVP and low urine output. The Patient is also stated to have been again examined by OP-2 in the evening and night of 02.08.2017.

6. The treatment provided to the patient from 03.08.2017 to 08.08.2017 prior to being shifted to Escorts Hospital may be noticed as per the stand taken by OP-1 in the Written Version as under:-

> *"f) On 3.08.2017., The patient was in Metabolic acidosis as reflected in ABG but his urine output improved and creatinine came down to 4.7 from 5.8. and TLC came down to 6000 from 17600. But his CRP was high 50 l.u and Urea also rose to 151 . Amylase levels (which are indicative of Pancreatitis) also improved . But he kept on complaining of Pain Abdomen and Back ache. His CT scan was done at Dhillon Scan Centre which showed Subacute Interstitial Edematous Pancreatitis, B/L*

Pleural Effusion, Basal Atelectasis, Peripancreatic Fluid collections, Dilatation of small bowel loops. It was Graded as Severity Index 6-7 and GRADE E which is a high score of Severity. (This high score of 6-7 carries 17% mortality rate please refer to medical literature attached separately Page 5 medical book Endoscopic Therapy of Pancreatic Disease : Stuart Sherman Jan 1998) annexure OP 1 & II /IV

The Patient was seen in morning, evening and at night by Dr Harpreet Singh as documented on page 12,13, and 14 of Hosptial file. All vitals of the Patient, central Venus pressure were all recorded hourly as documented on page 12,13,14 and 45 of the Hospital file.

g) On 04-08-2017, The patient was showing improvement in lab parameters as the amylase came down to 487, creatinine and urea was 1.6 and 99 respectively after hydration and TLC was also normal 9500. However, the patient had still had signs of hypoperfusion as his CVP was still low. However, the father of the patient did not want the patient to be kept in ICU but since the condition of the patient was not good enough to be shifted to room, the treating doctor clearly refused that it was not in the interest of the patient. The father of the patient however insisted that he wants to shift his son to normal room and will be responsible for all consequences. He was asked to write a note to this effect in his own hand. "He was written a note on page 15 of the Hosptial file which read (annexure OP 1 & 2 / 1)

"Sanu doctor sahib ne das dita hai ki sade marij di halat gambhir hai athe is nu ICU vich rakhan di loar hai par asi apni marji nal kamre vich shift hoi hain. Agar is doran je marij nal koi

ansukahvi ghatna vapardi hai us de jumavar asi khud ho-wange nah ki kohi hospital staff athe doctor jumawar ho-waga
Signed by father sarabdeep singh father "

h) The patient was also seen by Dr Harpreet Singh as documented on page 14 of Hospital file. (annexure OP 1 & 2 / 1)

i) On 05-08-2017, The patient was seen in the morning by DR Manmeet Singh MBBS MD DM (Nephrology), at 9.40 AM. as documented on page 17 of the Hospital file, Complete vitals were recorded and treatment reviewed by him. His notes are on page 16 of the Hospital file. The patient was regularly monitored, and vitals were recorded on page 17 and 18 of Hospital file. Abdominal X-Ray of the Patient was done and distended loops of gut were noticed., which are a complication of pancreatitis itself. On 5-08-2017, DR Manmeet Singh was regularly in touch with Dr Harpreet Singh on the condition of the patient, as DR Harpreet had gone for a conference at Delhi for a day. It is also documented on Page 47 of Hospital file (nurses treatment chart).Injection Midazolam and serenace was given to the patient as the patient became delirious due to alcohol withdrawal because the patient was a chronic alcoholic., and this was on the advice of Dr Harpreet Singh.

j) On 06-08-2017, Investigations were done ,vitals recorded and the vitals and investigations were reported to both Dr Manmeet Singh and Dr Harpreet Singh as documented on page 19 of Hospital file. The patient was seen by Dr Harpreet Singh in the Evening as documented on Page 20 of the Hospital file. In the evening the patient became unstable with pain abdomen, distension, tachypnea and delirium. His TLC started rising up to

15900 and Bilirubin also showed a rise to 2.16 although Urea, creatinine and amylase further improved. Keeping his critical condition and likelihood of a fresh attack or additional complications like infection, he was shifted to ICU and was put on Anti-fungal and Metrogyl. The seriousness and the possibility of the fresh complication was all explained to the attendants and now therefore they agreed to shift the patient to ICU again to which they were earlier reluctant. The is duly documented on page 21 of the hospital file. On 06-08-2017 again nephrology opinion was sought from DR Manmeet Singh DM Nephrology. (as documented on page 22 of Hospital file annexure OP 1 & 2 / 1)

Page 21 of Hospital record reads
DATE 06-08-2017 Time 6.30 PM
Consent for seriousness

Dr Sahib ne sanu sadhe mariz di sari halat bare das dita hai ki sade mariz di dil di dharkan bahut vad gai hai athe BP vee bahut vadh giya hai athe mariz nu bahut ghabrat ho rahi hai athe sah lain vich vee mushkil aah rahi hai . Doctor sahib nal sanu ICU vich dakhal karan di salah diti hai athe ilag de dorahan sanu aahrahla mushkila bare das dita hai aasi eh sab kuch jandla doctor sahib nu ilag karan di ijazat dende hai . Ilaj de dorahan athe badh vivh sadhe marij nu kuch vi hunda hai usde jumawar Hasaptal athe hasaptal de doctor sahib athe staff nurse koi vee zumewar nahi hovega.

Signed father

k) On 07-08-2017 patient was seen by DR Harpreet Singh in the morning and was regularly monitored by him personally. Jejunal tube was inserted. He was stable in the morning but started deteriorating afterwards when his TLC shot up to 19500 and bilirubin further rose up to 4.3 which signaled multi organ involvement due to sepsis and septic shock and its sequelae (SIRS) leading to fall in BP in midnight with high grade fever . The regular management of the patient is recorded on Page 23,24 and 25 of the Hosptial file. (annexure OP 1 & 2 /1)

l) On 07th night the patient had high grade fever with shivering on midnight and BP started falling it was 130/80 at 2 AM, came down to 100/80 and then at 5 AM it came down to 80/50 when at the advice of DR Harpreet Singh the patient was started norepinephrine infusion @ 5 ml per hour and further titrated up to 8 ml/hr. Patient was put on noninvasive ventilatory support. The oxygen saturation was only 65-70% and the patient needed Advanced Ventilatory Support due to Acute Respiratory Distress Syndrome, which is again a complication of Acute Pancreatitis and carries high Mortality Rate. (annexure OP 1 & 2 /IV)

m) Early morning on 08-08-2017 therefore, the patient was advised to be shifted to Escorts Hosptial at 8.AM on 8.08.2017 after the consent of the father of the patient. (annexure OP 1 & 2 /1)"

7. Opposite parties further emphasized that kidney function of the patient was derailed because of acute pancreatitis at the time the patient landed in the hospital. However, due consultations were

made with Dr. Manmeet Singh, DM nephrology and the patient did not require dialysis as his urine out was quite adequate. Also the levels of urea/creatinine are stated to have improved after treatment. As per case set up by the OPs patient had poor prognosis from day one of his admission and the attendants were duly apprised of his condition.

8. OPs also stated that though the records of Escorts Hospital on shifting had not been submitted by the Complainant but as per death certificate dated 09.08.2017 cause of death of deceased was recorded as under:-

- *"Sepsis-Septic Shock*
- *Acute kidney injury*
- *Acute edematous pancreatitis*
- *Seizure disorder."*

9. OPs further point out that Complaint was filed by one of the LRs of the deceased with the police and a Medical Committee was constituted to look into the allegations at the instance of Civil Surgeon. However, the report of the Expert Committee had not been received by them.

10. Opposite Party No. 3 (Insurance Company) took a stand that in terms of the Indemnity Policy the Insured had to discharge its

liability and thereafter could approach the Insurer. Further if the Insurer is satisfied that there was no violation or infringement on the part of the Insured, the Insurer would indemnify the Insured. The indemnity is further stated to be limited to Rs.10,00,000/-, subject to terms and conditions of the policy.

11. Complainant tendered her evidence by way of affidavit before the Ld. State Commission. On the other hand, Opposite Parties No. 1 and 2 led evidence of OP-2 Dr. Harpreet Singh, by way of affidavit. The interrogatories raised on behalf of the Complainant were also replied on behalf of the OP-2.

OP-3 Insurance Company led evidence of Sh. R.L. Baleem, Manager by way of affidavit.

12. Ld. State Commission noticed that on 05.08.2017 Dr. Harpreet Singh, OP-2 was unavailable and the patient was left under the care of his junior doctors and nurses / paramedical staff. The patient is stated to have been left for treatment under care of locums i.e. BAMS and proper record is stated to have not been maintained as per MCI Regulations. Nothing is stated to have been indicated on record as to investigation and treatment made on 05.08.2017. Taking the same into consideration, it was observed that leaving the

patient for two days amounted to deficiency in service and medical negligence. Ld. State Commission also held that treatment given to the patient apparently appeared to be inadequate looking into the record of the patient from 03.08.2017 to 06.08.2017 since there was constant increase in TLC level which deteriorated the health of the patient. Further no proper investigation is stated to have come on record which was carried by OP-2 and merely recording the vitals was not enough. It was further observed that there is no clarity/explanation as to who was treating doctor in the absence of Dr. Harpeet Singh/OP-2 and in any case the patient could not have been left to the care of Ayurvedic doctors. Keeping in view the preponderance of probability and inference, Ld. State Commission held that Complainant had been able to prove case of deficiency in service and medical negligence against OP-1 and OP-2 and accordingly awarded the compensation as noticed above.

Submissions on behalf of the Appellant

13. Ld. Counsel for the Opposite Parties/Appellants contends that patient Iqbal Singh at the time of admission had been diagnosed as a case of Acute Pancreatitis, heavy alcoholic on Paroxetine and Pregabalin. With regard to the condition of the patient at the time of

admission and treatment provided from 02.08.2017 to 08.08.2017 he points out the following factors in the brief synopsis:-

> *"That patient Iqbal Singh – a case of **Acute Pancreatitis**, heavy alcoholic, on **Paroxetine** and **Pregabalin,** with multi-organ involvement due to pancreatitis – TLC 17,600, Amylase level 2671 (against normal range of 25-115), Creatinine 5.8 against normal range of 0.9 to 1.3, BP of 80/60, landed from Beas Hospital to Liver and Digestive Disease Centre run by Dr. Harpreet Singh, MD (Medicine), DM (Gastro), formerly at PGI.*
>
> *That the patient remained admitted from 02-08-2017 evening to 08-08-2017 morning. On 03-08-2017, CT scan indicated Grade E with severity index 6-7, which as per medical literature carries a mortality rate of 17%.*
>
> *That the patient was admitted under Dr. Harpreet Singh and was treated by Dr. Harpreet Singh and Dr. Manmeet Singh, MBBS, MD, DM (Nephrology). Affidavits of both treating doctors and the medical records indicating the treatment are on record. The recommended treatment by Dr. Harpreet Singh was as per set medical protocol; the same resulted in improvement in the condition of the patient. The patient was initially admitted in ICU on 02-08-2017, shifted to room on account of improvement on the evening of 04-08-2017, and later, post deterioration and following the same set medical protocol, had a recurrent acute pancreatitis, which is well-known in cases of alcoholic pancreatitis as per medical literature.*
>
> *That the set medical protocol for alcoholic pancreatitis is: (a) Fluid replacement; (b) Pain management; (c) Bowel rest; (d) Nutritional support; (e) Antibiotics/medical management. Fluid control (input-output chart page 268), pain control **(medication chart page 278),** bowel rest **(page 248),** nutritional support **(page 278 — IV fluids given)**, antibiotics **(medication chart page 268).***

That the patient initially recovered, as is evident from the ***investigation chart*** *on page 235 — TLC from 17,000 reduced to 6,000 on 03-08-2017, 9,500 on 04-08-2017; Creatinine from 5.8 on 02-08-2017 reduced to 4.7 on 03-08-2017 and 1.6 on 04-08-2017; and most importantly, the serum Amylase, which was 2871 on 02-08-2017 against normal range of 25-115, came down to 1115 on 03-08-2017 and 487 on 04-08-2017. For all these reasons, the patient was shifted to room on 04-08-2017.*

That there was no change in treatment and medication by any junior staff or any BAMS doctor. It was only Dr. Harpreet Singh and/or Dr. Manmeet Singh who treated the patient, as is evident from medical records before the SCDRC.

That Dr. Harpreet Singh attended a medical conference in Delhi on 05-08-2017 and was back on 06-08-2017. As is evident on record (page 247 of the appeal file), Dr. Manmeet Singh visited the patient on 05-08-2017 morning, examined the patient, observed the condition of the patient, noted his improvement, input-output, improved BP, improvement in creatinine levels, total blood count, and directed that the same medication be continued. Again, on 05-08-2017, when the patient complained of restlessness and abdominal fullness at 1:00 PM, an X-ray abdomen was ordered by Dr. Manmeet Singh and diagnosis of distended loop of gut was taken note of. Again, in the evening at 4:40 PM, the patient was assessed. The feed of the patient was also kept on hold. *Fresh investigations were done on 06-08-2017 and, as documented on page 250, the investigations were shared with Dr. Manmeet Singh and Dr. Harpreet Singh. On 06-08-2017 evening, again the patient was seen by Dr. Harpreet Singh and Dr. Manmeet Singh, as documented on page 251. Dr. Manmeet Singh, as documented on page 253, directed the patient to be shifted to ICU as the patient developed respiratory distress.*

That the medical records and the treatment given by Dr. Harpreet Singh and Dr. Manmeet Singh were gone into by the Civil Surgeon on the

complaint of the father of the patient (pages 418-419 of the appeal file). The Board held: "..... along with this, the Board came to know that there was no internist and MBBS doctor present at the hospital for 24 hours and on 05-08-2017 to 06-08-2017 Dr. Harpreet Singh was not present in the hospital/Amritsar. But in the absence of Dr. Harpreet Singh, Dr. Manmeet Singh Jhavar (he is a DM Nephrology doctor) treated the patient. As such, the allegation of the complainant for medical negligence has not been found directly."

That the present consumer complaint was filed by Loveleen Kaur, a lady who claims to be the wife of the complainant and who never visited her ailing husband, and who admitted having been remarried by the counsel of the complainant. The complaint was decided by the SCDRC, singularly ignoring the facts and evidence on record. It is wrongly recorded that (a) the patient was left to locums, i.e., BAMS doctors, and leaving the patient for two days, who was a high-risk patient, amounts to deficiency in service. The observations are wrong in totality and have been explained in detail ***in appeal pages 27 to 41 of the appeal*** *filed by the appellant.*

That in fact, no treatment was given by any BAMS doctor, and merely because they are working as senior medical assistants does not give a presumption of cross-pathy. As per the notification of the Punjab Government, ***page 411 of the appeal file****, even BAMS doctors can practice modern medicine. It is simply on this ground that negligence has been attributed to the treating doctor, Dr. Harpreet Singh.*

That the Medical Board has also verified the medical records and found that in the absence of Dr. Harpreet Singh, the treatment was given by Dr. Manmeet Singh, who is a DM-level doctor. The expert evidence of Dr. Gurblas P. Singh, Consultant Gastroenterologist at Fortis Hospital, where the patient was shifted, clearly states that proper medical treatment as per set medical protocol was given to the patient and there

was no negligence, delay, or deficiency in treatment, and the treatment given was on the same lines as given at Fortis Escorts Hospital.

That medical literature on alcoholic pancreatitis by eminent doctors from AIIMS also indicates that organ failure typically develops early in the course of acute pancreatitis but may also develop later due to infected pancreatic necrosis-induced sepsis. Moreover, acute pancreatitis is prone to recurrence even during treatment. Factors such as changes in pancreatic structure and uncontrolled systemic inflammatory reaction (SIR) are responsible for the recurrence of acute pancreatitis."

Submissions on behalf of the Respondent

14. On the other hand, the Appeal is vehemently opposed on behalf of Respondent/Complainant. Ld. Counsel for Complainant submits that on the face of record despite the patient being in critical condition, he was left in the care of doctors possessing BAMS qualification in flagrant violation of Indian Medical Council (Professional Conduct, Etiquette and Ethics), Regulation, 2002 which require that the physician trained in modern (Allopathic) medicine shall not delegate the care of a patient requiring Allopathic treatment to a non-Allopathic practitioner. He emphasizes that since the condition of the patient was critical continuous monitoring by a specialist was imminent in the absence of OP-2 on 05.08.2017 and 06.08.2017 as he left for attending the Conference. Ld. Counsel reiterated that as S. Creatinine and Urea remained dangerously

deranged, S.Amylase and Bilirubin began an unchecked ascent and the condition of the patient deteriorated owing to improper treatment which ultimately led to death of patient on 09.08.2017.

Ld. Counsel further emphasizes that the findings and evidence do not call for re-appreciation as they cannot be termed to be perverse and inferences have been drawn considering the serious condition of the patient who was suffering from Acute Pancreatitis with a CT severity index of 6-7 (Grade E) and had a mortality risk of 16 to 17%. He further states that merely because Dr.Manmeet Singh, Nephrologist had been deputed to examine the patient, the same cannot absolve OP-2 of the responsibility to monitor the patient. He submits that in the absence of any consent, the care of critically ill patient could not have been delegated to doctors practicing non-Allopathic system of medicine. The condition of patient is stated to have deteriorated during absence of OP-2 on 05.08.2017 to 06.08.2017. Reliance is further placed by Ld. Counsel for the Respondent/Complainant on ***Samira Kohli v. Dr. Prabha Manchanda & Anr.*** **(2008) 2 SCC 1** and ***Savia Garg v. The Director, National Heart Institute,*** **2005 (1) Civil J 621.** Ld. Counsel also points out that there is an overwriting/correction

whereby the date originally recorded as '04.08.2017' on treatment papers was altered to '05.08.2017'. It is accordingly prayed that Appeal be dismissed.

Analysis

15. It is well settled that a doctor is not negligent, if he is acting in accordance with acceptable norms of practice unless there is evidence of medical body of skilled persons in the concerned specialty opining that the accepted principles/procedures were not followed. Consequently, medical professional can be held liable for negligence only if he fails to exercise reasonable skill which he possesses in giving the treatment or in case he does not possess the requisite qualification or skill.

16. It may further be noticed that the principle governing 'negligence' by a professional doctor has been authoritatively settled in leading case of ***Bolam v. Friern Hospital Management Committee,*** **1957 (2) ALL ER 118 QBD** and it lays down that a man need not possess the highest expert skill; it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. The said principle of law is followed by the Indian Courts and has been extensively referred to in ***Jacob Mathew v.***

***State of Punjab,* (2005) 6 SCC 1** and is a touchstone to test the plea of medical negligence.

Conclusions drawn by Hon'ble Apex Court in ***Jacob Mathew v. State of Punjab and Another*** (supra) in para 48 of the judgment may be beneficially reproduced :-

> *"48. We sum up our conclusions as under:*
>
> *(IX) 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".*
>
> *(2) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence.* ***A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional.*** *So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or*

method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. ***When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.*** *So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.*

(3) 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.

*(4) The test for determining medical negligence as laid down in Bolam case [(1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)] , WLR at p. 586 [[**Ed.**: Also at All ER p. 121 D-F and set out in para 19, p. 19 herein.]] holds good in its applicability in India.*

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly".

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa

loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

17. Reference may also be made to observations of the Hon'ble Apex Court in ***S. K. Jhunjhunwala v. Dhanwanti Kaur and Another,*** **(2019) 2 SCC 282** in para 22 and 23:-

> ***"22.*** *It was held in* ***Jacob Mathew case [Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369]*** *that 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 what the entire 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 not possess.*
>
> ***23.*** *It was further observed in Jacob Mathew case [Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369] that the fact that a defendant charged with negligence who acted in accord with the general and approved practice is enough to clear him of the charge. It was held that the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident and not at the date of trial. It was held that 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 practises. His Lordship quoted with approval the subtle observations of Lord Denning made in Hucks v. Cole [Hucks v. Cole, (1968) 118 New LJ 469], namely,

"a medical practitioner was not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be held liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field".

(emphasis supplied)"

18. Following ***Jacob Mathew v. State of Punjab*** (supra)**,** Hon'ble Apex Court in ***Kusum Sharma v. Batra Hospital,*** **(2010) 3 SCC 480** laid down the principles to be considered while determining the charge of medical negligence, which stand reiterated in ***M.A. Biviji v. Sunita, (2024) 2 SCC 242*** as under:-

"89. … (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.

(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 another 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.

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

19. Reverting back to the facts of the case, the findings by the learned State Commission need to be evaluated in the light of pleadings and evidence on record, to ascertain if OPs exhibited lack of such degree of standard of skill as any other ordinary competent

practitioner exercising skill in the concerned speciality, on admission of the patient in the OP-1 hospital on 02.08.2017.

20. OPs have relied upon the Investigation Reports of Beas Hospital reflecting the condition of the patient at the time of admission in OP-1 hospital along with reading of USG which indicates *acute pancreatitis (ALD i.e. alcohol liver disease), B/L pleural effusion and ascites (i.e. fluid accumulation)*. Also, the final test reports dated 02.08.2017 at Beas Hospital have been relied to show that the creatinine level was 5.6 (against normal range of 0.9-1.3), amylase serum at 2673 (against normal range of 25-115) along with certain other raised parameters with reference to liver function test. Reference is also made to the CT scan report dated 03.08.2017 from Dhillon Test Centre indicating "*Subacute Interstitial Edematous Pancreatitis with Peripanceartic fluid Collection Grade-E with Severity Index of 6-7.* The above reports are pertinent to be noticed as they reflect that the deceased patient was in a critical condition at the time of admission at OP-1 hospital. It needs to be considered if the patient was treated as per settled medical protocol for alcoholic pancreatitis at the time of admission by OP-2.

21. The management for alcoholic pancreatitis is admittedly by way of *"(a) Fluid replacement; (b) Pain management; (c) Bowel rest; (d) Nutritional support; (e) Antibiotics/medical management".*

The extract of laboratory investigations showing the crucial parameters of the patient from 02.08.2017 till 07.08.2017 as placed by the appellants in tabulated form may be further reproduced to analyse if the condition of the deceased was stable or had deteriorated till the evening of 06.08.2017 when the patient suffered restlessness:-

EXTRACT OF INVESTIGATION CHART SHOWING DIFFERENT PARAMETERS FROM 2-8-2017 TO 7-08-2017 (Page 235 of Appeal File)

PARAMETERS/DATE	02-08-2017	03-08-2017	04-08-2017	05-08-2017	06-08-2017	07-08-2017
TLC	17000	6000	9500	-	15900	19500
CREATININE	5.8	4.7	1.6	-	1.0	1.1
UREA	63	151	99	-	40	34
AMYLASE	2871	1115	487	-	225	190
SUGAR	104	106	112	-	-	-
C-REACTIVE PROTEIN		50.0				49.0
ABG	-	+	-	-	+---+	-
CT-SCAN	-	+	-	-	-	-
X-RAY CHEST	-	+	-	-	-	-
X-RAY ABDOMEN	-	-	-	+	-	-
	Page 134-135 of Medical Reports (Beas Hospital)	Page 140-142 of Medical Reports	Page 143 of Medical Report		Page 145-148 of the Medical Report	Page 149-150 of the Medical Report
IV FLUID (ml)	5000	5000	3000	2850	3050	2725
URINE OUTPUT (ml)	500	4000	4300	2500	2120	3100
CVP	6mm	5-8mm	6-7mm	5-4mm	2-7mm	5-6mm
BP	80/60	110/70	120/80	130/90	150/90	150/90
ANTIBIOTICS (Inj.)	Imipenum	Imipenum	Imipenum	Imipenum	Imipenum, Morcery	Imipenum, Morcery

22. The comparative table of parameters with reference to the various tests undergone by the patient from 02.08.2017 to 06.08.2017, reflects that the TLC count reduced from 17000 to 15900 on 06.08.2017 after initially reducing and thereafter, again rose to 19500 on 07.08.2017. Further, the creatinine level reduced from 5.8 to 1; urea reduced from 63 to 40 and amylase level stood controlled from 2871 to 225, as on 06.08.2017. The other parameters of the patient were comparatively better till 06.08.2017 but unfortunately, the patient had to be shifted in the evening of 06.08.2017 to ICU, after arrival of Dr. Harpreet Singh/OP-2, as he developed respiratory distress.

23. The treatment documents placed on record also reflect that the patient was seen on 05.08.2017 in the morning by Dr. Manmeet Singh, DM Nephrology and the vitals were reviewed by him. Further, the investigations of the patient were again done on 06.08.2017 and the patient was seen by both Dr. Manmeet Singh and Dr. Harpreet Singh in the evening.

24. An affidavit of Dr. Manmeet Singh, MD, DM Nephrology has also been relied upon on behalf of OP-1 and 2, who affirmed regarding examination of deceased patient on 05.08.2017 and stated that he had been in touch with Dr. Harpreet Singh / OP-2 on

5th and 6th of August, 2017. He further stated that the patient had been monitored by him in the absence of Dr. Harpreet Singh and denied any negligence or deficiency or delay in service by OP-1 and 2. We may further notice that in the interrogatories raised on behalf of the Complainant, it was clarified by OP-2 in response to interrogatory 6 that treatment was provided as per medical protocol and further pursuant to complaint made by father of deceased patient reference was made to the enquiry conducted by Civil Surgeon and the outcome of the same is stated to have been intentionally concealed before the Ld. State Commission. The response to interrogatory No. 6 may be reproduced for reference:-

> ***"Interrogatory no 6.***
>
> *Can you tell the name of paramedical staff and the Doctors who attended patient Iqbal Singh when he was at your clinic?*
>
> ***Answer:***
>
> *I think you are aware of the fact that your father in law has filed a complaint and all the doctors and para medical staff was summoned on his request. Dr Chandani Thakur and Dr Avidesh Kumar have attended the enquiry of the Civil Surgeon on the matter, in addition to myself and Dr Manmeet Singh , were all questioned by the Civil Surgeon in the enquiry, the results of which were concealed from the Hon'ble Commission and in the complaint filed by you. The staff nurses on duty have been Rajbir kaur, Sandeep Kaur and Rajni.*

……

Interrogatory no 9.

Can you tell that whether there was any other doctor who was called by you for giving extra treatment, when you noted medical complications in Iqbal Singh?

Answer:

As the problem was of my specialty. I being a qualified gastroenterologist was the treating consultant. The main complication the patient was having was because of acute pancreatitis for which I have initiated the treatment from day one. And the same was monitored by me till the patient was shifted to Escorts Hosptial, when he required advanced ventilatory support. Dr Manmeet Singh (Nephrologist) was called for monitoring the patient during my absence for a day and also for nephro consultation when it was required.

25. The treatment extended to the patient by OP-2 and Dr. Manmeet in the evening of 06.08.2017, as his condition became critical is also detailed in response to interrogatory No. 19 as under:-

Interrogatory no 19.

What treatment was given by you when TLC crossed 15900 and further 19500 on 07.08.2017?

Answer:

TLC was 15900 on 6/08/2017 as already stated in PARA 15 of my affidavit , That On 06-08-2017, Investigations were done ,vitals recorded and the vitals and investigations were reported to both Dr Manmeet Singh and me as documented on page 19 of Hospital file. The patient

was seen by me in the Evening as documented in Hospital record. In the evening the patient became unstable with pain abdomen, distension , tachypnea and delirium. His TLC started rising up to 15900 and Bilirubin also showed a rise to 2.16 although Urea, creatinine and amylase further improved. Keeping his critical condition and likelihood of a fresh attack or additional complications like Infection , he was shifted to ICU and was put on Inj Forcan (Anti-fungal) and Metrogyl. The seriousness and the possibility of the fresh complication was all explained to the attendants and now therefore they agreed to shift the patient to ICU again to which they were earlier reluctant. This is duly documented on page 21 of the hospital file. On 06-08-2017 again nephrology opinion was sought from DR Manmeet Singh DM Nephrology. (as documented on page 22 of Hosptial file).

26. Perusal of record further indicates that an affidavit of Dr. Gurbilas P. Singh, Consultant Gastroenterologist at Fortis Escorts Hospital, Majitha-Verka Bypass, Amritsar was also relied upon by OPs who affirmed that the patient was admitted in Fortis Escorts Hospital under his care in Department of Gastroenterology. With reference to the treatment extended to the deceased patient by him as well as OP-2 his observations in paragraphs 6 to 9 are pertinent to be observed:-

6. That Acute Pancreatitis is a sudden inflammation of pancreas. It can have severe complications and high mortality despite treatment. The patient is diagnosed of Acute Pancreatitis as is

evident from page 20 of the admit cum OPD card attached with the complaint where it is indicated that the patient is shifted from Beas Hospital with Acute Pancreatitis, ALD (Alcoholic liver disease) B/L Effusion (pleural effusion lungs) and Ascites . Initial management of a patient with acute pancreatitis consists of supportive care with fluid replacement, pain control and nutritional support. The management of the patient with Pancreatitis is done with Fluid Replacement , Pain Control, Bowel Rest , Nutritional support and Antibiotics. The line of treatment is indicated on the Admit/Discharge Card attached by the Complainant with the complaint. The patient in this case was given intensive IV fluids with monitoring CVP Pressure every hour which remained low despite treatment, due to pancreatitis. The intake of fluids is duly indicated in the treatment chart at page 47 of the medical records. 'illegible' pain control patient was given injections 'Tramadol' as documented on the treatment chart page 47 of the medical records. Bowel rest is also important therefore the patient was not given anything orally as documented on the Nursing care record page 27 of the medical records. For Bowel rest R/T (Ryles tube) insertion was also done as indicated on page 27 of medical records. The patient was also given 'Rabeloc' injections for anti-ulcer and to decrease the juices of the pancreas. The patient was also on 'Lupinem' injections which are an anti-biotic of choice for infection of pancreas specifically. The patient was also given injections 'Sodabicarbonate' to correct metabolic acidosis caused by Pancreatitis and acute renal failure. The patient was also given other medication as per the condition of the patient from time to time.

7. That Renal failure is of three types .(a) Pre-renal ,which is because of lack of fluid in body which this patient had because of which he was given intensive IV Fluids with monitoring CVP

Pressure every hour . (b) Renal : which is local kidney disease with infection (c) Post renal : is because of obstruction by stones ,tumor or prostate. The patient recovered from kidney parameters as per laboratory investigations of Creatine and Urea due to fluids which the patients were given.

8. I would therefore say that proper treatment was given at Liver and Digestive Centre run by Dr Harpreet Singh and at Fortis Escorts Hospital where the patient remained admitted. The patient expired because of Acute Pancreatitis, Sepsis with shock, Acute kidney injury, severe metabolic acidosis, seizure disorder and the main cause of death was Multiorgan dysfunction which were all the sequelae of Acute Pancreatitis ,which in this patient was caused due to heavy alcoholism.

9. It is therefore clear that there is no evidence to suggest that there was any negligence or deficiency or delay in the treatment by Dr Harpreet Singh and the patient was examined, treated on standard scientific lines as per the condition of the patient. Dr Harpreet Singh is a very senior Doctor in the field of Gastroenterology and is fully qualified and experienced to treat such patients. The patient was shifted to Escorts under me because of better ventilatory support which the patient required at that time. My line of treatment has also been the same as was being followed by Dr Harpreet Singh.

27. The fact that the attendants of the patient were duly apprised of his condition and the consent form was obtained from time to time also stands clarified in response to interrogatory No. 16 to OP-2 as under:-

Interrogatory no 16.

Did you inform the family members of the patient regarding attack of pancreatitis?

Answer:

The condition and the diagnosis of Acute Pancreatitis of the patient was briefed every day to the attendants. The patient was being attended by your father and your father in law. The seriousness was also explained on day one when ICU admission consent was taken from your father. On 2/08/2017. On 4/08/2017 consent for seriousness is also signed by you father in law. And again on 6/08/2017 6.30 pm the consent for seriousness was signed by your father in law that is father of patient Iqbal Singh.

28. We may also notice that no expert evidence has been led on behalf of the complainant/respondent, which may lead to an inference that the course of medical treatment provided to the deceased patient by OP-2 / Dr. Harpeet Singh is contrary to medical norms, i.e. from the date of admission at OP-1 Hospital on 02.08.2017 till 07.08.2017. The patient suddenly became unstable with pain abdomen, distension, tachypnea and delirium in the evening of 06.08.20174 which cannot be directly attributed to improper treatment. Patient was thereupon shifted to ICU apprehending likelihood of some additional complication and was put on anti-fungal treatment and metrogyl. The consent for seriousness was also obtained from the father of the patient.

Affidavit of Dr. Gurbilas Singh who is an expert in the field of gastroenterology and had treated the patient in Fortis Escort Hospital on being shifted from OP-1 hospital on 08.08.2017 categorically affirms that the line of treatment adopted by OP-1 hospital is the same which has been adopted in Fortis Escorts Hospital. He further affirmed that the patient expired on account of acute pancreatitis, sepsis with shock, acute kidney injury, severe metabolic >>>, seizure disorder and the main cause of death was multi-organ dysfunction which were all the sequel of acute pancreatitis which was caused due to heavy alcoholism.

29. Further merely because of an overwriting in the date i.e. 05.08.2017, in the course of treatment at OP-1 Hospital, it cannot be inferred that the patient had not been seen by Dr. Manmeet Singh at 9.40 am on 05.08.2017 as concluded by Ld. State Commission. The timings run in continuity in the treatment record dated 05.08.2017, whereby patient was examined at 9:40 AM by Dr. Manmeet Singh and thereafter monitored at 11:00 AM and 1:00 PM.

Given the nature of illness suffered by the deceased patient, the treatment was rendered in conformity with medical norms. There is no evidence to the contrary to establish that the condition of the patient

deteriorated on 05.08.2017, till prior to return of OP-2 on 06.08.2017 due to lack of rendering of appropriate medical treatment to the patient. The condition of the patient appears to have suddenly deteriorated in the evening of 06.08.2017, due to unforeseen complications, which was not in the hands of doctor.

30. We may also observe that a Complaint had been preferred by Sarabjit Singh (father of deceased patient Iqbal Singh) with the Commissioner of Police vide letter dated 04.10.2017, consequent upon which enquiry was instituted and a Medical Board was constituted by Civil Surgeon, Amritsar comprising of Dr. Ramesh Kumar, Assistant Civil Surgeon, Office of Civil Surgeon Amritsar; Dr. Maninder Singh (Medicine), Civil Hospital, Amritsar and Dr. Sumeet Singh (Surgery), C.H.C. Manawala. The report of the Medical Board dated 03.04.2018 as per copy placed on record and reproduced below also supports the fact that treatment for acute pancreatics was correctly followed by OP-2:

> *"Regarding above said cited subject your office letter No. 790-92 dated 02.11.17, as per Sh. Sarabdeep Singh son of Hajara Singh resident of Village Niranjanpur, Tehsil Baba Bakala, District Amritsar, regarding his complaint according to the advice of board members, the copy is given to Sh. Jatinder Singh Manager, Harpreet Singh Hospital, the Mall, 12/16, Mall Road, Amritsar, as*

per his request and regarding the inquiry of death of patient S. Iqbal Singh son of Sarabdeep Singh, the file record of hospital and other records has been presented from Harpreet Hospital.

Sh. Sarabdeep Singh son of Hajara Singh resident of Village Niranjanpur, Tehsil Baba Bakala, District Amritsar blamed in his application that we admitted our patient under the supervision of Dr. Harpreet Singh at Harpreet Singh Hospital regarding his treatment. Tests were done continuously but the patient condition kept on worsening. From 03.08.17 upto 06.08.17, Dr. Harpreet Singh was not present in the Hospital and he never come to attend the patient even after our repeated request to the hospital staff because of the critical condition of our patient. He never came to seen the patient during this period.

It has been found from the record which was presented by Dr. Harpreet Singh that the patient Iqbal Singh son of Sarabdeep Singh was chronic alcoholic with acute severe pancreatitis with acute severe kidney injury case. Counseling regarding the critical condition of the patient was done and high risk consents were taken from the patient's attendants. His treatment was started at I.C.U. and his condition improved in the beginning but patient was shifted to room from ICU on attendant's request. Counseling and written consents were taken. Thereafter, the patient's condition did not improve, and the condition worsened.

Dr. Harpreet Singh produced the record regarding his presence at hospital on 03-8-17, 04-8-17 and 07-8-17 and produced the copy of his O.P.D Register/ Endoscopy Register.

On dated 05-8-17, 6-08-17, Dr. Harpreet Singh was not present at Amritsar but his treatment was continued under the supervision of nephrologist Doctor Manmeet Singh Jhavar (D.M.).

According to the record produced by Dr. Harpreet Singh, the photocopies of tickets were enclosed. According to which he went from Amritsar to Delhi to attendant medical council on dated 05-08-17 at 6:45am flight and came back on 6-8-17 in evening flight which reached Amritsar at 6:20pm. He did not examine the patient from 5-8-17 till 6-8-17 evening. Patient condition became critical on 07.08.2017 and was referred to Escort hospital on 08.08.17 at 08:15 AM. Over there the patient died on 09.08.17.

The two doctors were appointed for the care of the patient at Harpreet Hospital namely Dr. Chandni Thakur (B.A.M.S.) and Dr. Avdesh Kumar (B.A.M.S.). They also stated in their statement we took care and looked after the patient according to the guidelines of Dr. Harpreet Singh but both the doctors were B.A.M.S and are unable to take care of these types of serious patients. So the all record of above said group of Harpreet Hospital, Airfare tickets, and the statements of the doctors who took care and looked after the patient, the advice of the board members are that the patient Iqbal Singh son of Sh. Sarabdeep Singh was suffering from serious diseases. His treatment was started according to the standard treatment protocols at I.C.U. and his condition also improved. But the relatives of the patient wanted treatment in the room instead of ICU regarding which counseling was down and patient's condition worsened and due to his serious diseases. The two-highly qualified D.M. doctors treated to the patient. That due to cause of worsened condition of the patient, he will be referred for his better treatment at Escort Hospital, Amritsar.

Along with this the Board came to know that there is no intervist and M.B.B.S. Doctor were not presented at Hospital for 24 hours duty and on 05-08-17 to 06-08-17 Dr. Harpreet Singh not

presented at Hospital/Amritsar. But in the absence of Dr. Harpreet Singh the Dr. Manmeet Singh Jhavar (he is also a D.M. Nephrology Doctor) treated the patient. As such the allegation of the complainant for medical negligence has not been found directly.

The report of inquiry of Board Members has been forwarded you for further proceedings.

31. In the absence of any evidence to the contrary, categorically establishing that there had been negligence in evaluating and treating the patient by OP-2, deficiency in service by OP-2 cannot be inferred. A simple lack of care or an error of judgment to foresee subsequent complications on 06.08.2017 is not a proof of negligence on the part of medical professional. It is well settled that negligence is a 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 something which a prudent and reasonable man would not do. The diagnosis and treatment provided by OP-2 in the OP-1 hospital in the facts and circumstances, does not establish any negligence in rendering the treatment during admission of the patient.

32. Further based upon the medical record along with evidence produced on behalf of OP-1 and OP-2, we are unable to concur with

the findings of the Ld. State Commission that the assessment of the patient was not done by qualified specialists on 05.08.2017 and 06.08.2017 and merely the vitals were recorded. Dr. Manmeet Singh, Nephrologist had examined the patient and was also in touch with OP-2 Dr. Harpreet Singh on 05th and 06th of August, 2017 during his absence. In view of above it cannot be inferred that competent doctor was not available for treating the patient on 05th and 06th of August, 2017.

33. Ld. State Commission has further attributed medical negligence considering that Dr. Harpreet Singh (OP-2) had left the hospital for attending a conference at Delhi on 05.08.2017 and returned on 06.08.2017, leaving the patient in care and supervision of BAMS doctors qualified to practise in Ayurveda who had been engaged by OP-1 Hospital.

34. We may observe that Hospital remains responsible not only for the act of the treating doctors but also for services rendered by nursing staff / para-medical staff and other services expected to be delivered from time to time during the course of treatment. The Hospital / Institute along with the doctors owe a duty to the patients and cannot

get away in case of lack of care of the patients as observed in **Savita Garg Vs. Director, National Heart Institute (2004) 8 SCC 56**.

However, at the same time, it needs to be kept in perspective that the medical services which may be available in small nursing homes or medical centres in towns and villages are limited as compared to the full-fledged medical facilities which are available in larger set-ups in cities.

35. We also cannot ignore the fact that at times the treating doctor/physician may be unavailable on account of some exigencies or emergent situations. The attending of medical conferences by doctors is also a mandate by MCI, for ensuring that the doctors keep themselves abreast / updated with latest developments in medicine which are dwelled upon in such events. However, in the eventuality the physician / doctor intends to attend a conference, duty is cast upon hospital to ensure availability of a duly qualified specialist / practitioner to take care of critical patients admitted in the hospital.

36. In the afore-said context we may also notice that BAMS doctors are at times employed in some hospitals for patient care coordination though they are not expected to be allocated independent allopathic clinical duties to manage ICUs / emergencies. The NABH Accreditation

Rules prescribed by the National Accreditation Board for Hospitals and Health-care Providers (NABH) also lay an emphasis in this regard for purpose of accreditation. Further in terms of Regulation 7.10 of the MCI (Professional Conduct, Etiquette and Ethics) Regulations, 2002, practitioners in Ayurveda (BAMS) are prohibited to be appointed by Allopathic practitioners for Allopathic services.

37. In the present case OP-1 Hospital appears to have engaged BAMS doctors for indoor management and supervision of patients during absence of OP-2, though at the same time services of Dr. Manmeet Singh had been requisitioned for the purpose of examining the patient on 05.08.2017 and 06.08.2017. Even though the afore-said BAMS doctors may not have prescribed any Allopathic treatment to the patient, but keeping in perspective that patient was critically ill in ICU, deployment of a qualified medical practitioner was imperative by OP-1 to ensure proper supervision and management. OP-1 Hospital apparently failed to deliver the expected level of services by way of supervision and monitoring through qualified Allopathic practitioner on 05th and 06th of August, 2017. Considering the afore-said irregularity, we deem it appropriate to award compensation of Rs. 5 lakhs to the Complainant payable by OP-1 Hospital along with litigation expenses

of Rs.50,000/- within 4 weeks. The Order passed by the Ld. State Commission is accordingly set aside.

Conclusion

OP-1 hospital is directed to pay a consolidated amount of Rs.5 lacs to the Complainant along with litigation expenses of Rs.50,000/- within four weeks of the passing of this Order, failing the amount shall be payable with interest @ 9% per annum. Appeal is accordingly disposed of.

Pending applications, if any, stand disposed of. A copy of this Order be provided to the concerned parties by the Registry.

…….....……..…….
(AVM J. RAJENDRA, AVSM VSM (RETD.)
PRESIDING MEMBER

.....……..…….
(ANOOP KUMAR MENDIRATTA, J)
MEMBER

ar/sd/B-4/reserved matter