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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10897 OF 2014

Miraj Medical Centre Miraj
through Medical Superintendent & ors. ..Petitioners
vs.
Sunil Tukaram Danane & anr. ..Respondents

....
Shri P.S. Dani, Senior Advocate i/b. Shri M.A. Patil for
petitioners.
Shri A.M. Kulkarni for respondents.
....

CORAM : M.S.KARNIK, J.

DATE : 15th OCTOBER, 2019

ORAL JUDGMENT :

This is an unfortunate case relating to the death of a baby boy born to the respondents. According to the respondents, the petitioners were negligent in performing their respective duties and due to lack of proper medical treatment the baby died on 9th July, 2010. The respondents approached the Consumer Disputes Redressal Commission (hereinafter referred to as 'the State Commission' for short) established under Sub-section (b) of Section 9 of the Consumer Protection Act, 1986

(hereinafter referred to as “the said Act” for short) for compensation alleging medical negligence on the part of the petitioners. The State Commission after considering all the materials and evidence on record arrived at a finding that there has been no medical negligence on the part of the petitioners. The complaint for compensation came to be dismissed. Thereafter the respondents filed an Appeal before the National Commission which came to be withdrawn as the respondents wanted to approach the Civil Court. The respondents therefore filed a suit before the Civil Court, claiming compensation for medical negligence. The case made out before the Civil Court is more or less on the same set of facts as before the State Commission. It is the respondents’ case that it is only before the Civil Court that they can adduce evidence of expert to prove medical negligence as the nature of negligence alleged by the respondents can best be tried by the Civil Court.

2. The petitioners raised preliminary objection that the suit is hit by the principle of res-judicata in view of the State

Commission having decided the complaint on merits after appreciating the evidence adduced. The trial Court held that the suit is not barred by the principles of res-judicata and that the Court has jurisdiction to try and decide the suit. The order is under challenge by way of present Petition filed under Article 227 of the Constitution of India.

3. The petitioners are original defendants before the trial Court and before the 'State Commission' they are impleaded as 'respondents'. The respondents herein are the original plaintiffs. Respondents are the complainants before the 'State Commission'. For convenience parties are referred to as 'petitioners' and 'respondents' as per their status in the cause title of this Petition.

4. Learned Senior Counsel for the petitioners would invite my attention to the order passed by the trial Court. He would submit that once the State Commission which is a competent Forum under the provisions of the said Act having

tried and decided the complaint on merits, for the same cause of action and on the same set of facts the civil suit as filed would be hit by the principle of resjudicata. Inviting my attention to the order passed by the State Commission, learned Senior Counsel urged that the findings are recorded after considering all the materials and after appreciating the evidence on record. He would further submit that after a detailed analysis of the entire evidence the State Commission recorded a categoric finding that the petitioners cannot be said to be negligent. He would also invite my attention to the various provisions of the said Act and the Rules framed thereunder.

5. According to him, not only did the State Commission arrive at a categoric finding that the medical negligence is not proved but even the Appeal filed before the National Consumer Commission having been withdrawn, the judgment and order passed by the State Commission has attained finality. According to him, the finding of trial Court that the decision of the State Commission does not operate as a res-

judicata is completely erroneous. In support of his submissions he relied on various decisions of the Apex Court which I will refer to at a later stage.

6. Learned counsel for the respondents on the other hand supported the order passed by the trial Court. He would submit that the very scheme of the said Act would go to show that the State Commission deals with complaints in a summary manner. He would submit that medical negligence can be proved only by leading appropriate evidence before the competent Civil Court and it is not possible to prove medical negligence by leading evidence before the State Commission. He would further urge that the Civil Court always has jurisdiction to try and decide the suit of a civil nature unless and until it is expressly or impliedly barred by law. According to him, the Act has been enacted with a view to provide speedy remedy to the consumers on the basis of summary trial on affidavits. In his submission, merely because some powers of civil Court are invested in the State Commission will not oust the jurisdiction of the Civil

Court. Learned counsel would further submit that the State Commission is competent to decide the claim only in cases where evidence is not required and when the complaint can be decided on affidavits in a summary manners. In his submission, the reason why the civil Court is approached is that in matters where medical negligence is pleaded, it is necessary to lead evidence of expert to prove medical negligence which can best be tried by a civil Court.

7. Learned counsel placing reliance on Section 3 of the said Act strenuously argued that the provisions of the said Act are in addition to and not in derogation of the provisions of any other law for the time being in force. He therefore submits that merely because the State Commission has dismissed the complaint will not bar the Civil Court from deciding the suit and the same is not hit by the principles of resjudicata.

8. Learned counsel also invited my attention to the order passed passed by the National Commission to urge that the Appeal against the order of the State Commission was

withdrawn for enabling the appellants to approach the civil Court. According to him, the view of trial Court that the suit is not hit by the principles of resjudicata cannot be said to be erroneous. Learned counsel would submit that a case of medical negligence being a complicated civil case would require expert evidence and therefore the respondents cannot be precluded from approaching the civil Court. In support of his submissions he would rely upon the following decisions :

- (i) **Inder Singh and another vs. Financial Commissioner, Punjab and others reported in (1997) 11 Supreme Court Cases 206.**
- (ii) **V. Kishan Rao vs. Nikhil Super Speciality Hospital reported in (2010) 5 Supreme Court Cases 513**
- (iii) **Laxmi Engineering Works vs. P.S.G. Industries reported in A.I.R. 1995 S.C. 1428**
- (iv) **Virendra Jail vs. Alaknanda Cooperative Group Housing Society Ltd. And others reported in (2013) 9 Supreme Court Cases 383.**

9. Heard learned Senior Counsel for the petitioners and learned counsel for the respondents. I have perused the copy of the Petition and all the annexures.

10. For gross deficiency in service vis-a-vis medical negligence in giving treatment to the baby, complaint came to be filed before the State Commission. With the assistance of the learned counsel I have gone through the order dated 2/11/2012 passed by the State Commission. During the proceedings before the Fora, the respondents relied upon several affidavits including that of the present respondent No.1 Mr. Sunil Tukaram Danane, affidavit dated 24/9/2012 of Dr. Aarti Bhise and affidavit of the ward boy Mr. Prabhakar. The other materials relied upon by the parties included FIR lodged in the Police Station Miraj, Nurses Daily Record pertaining to the birth of a new born, Death Certificate issued by the Hospital and the sonography report of Dr. Nikit Mehta. The State Commission considered all the materials on record in detail which included the affidavits of doctors who treated the baby. The Fora in paragraph 15 has recorded a finding that all necessary procedures as per standard medical protocol in the given circumstances were followed. It is also noted that it is not that baby could not get help of an expert pediatrician when the baby needed it. The Fora found the death

of the baby was unfortunate but is not a case exhibiting any medical negligence on the part of the treating doctors. After a detailed analysis of the evidence on record, the State Commission concluded that the respondents miserably failed to establish any medical negligence. The order passed by the State Commission was challenged in Appeal filed before National Commission. The said Appeal was withdrawn on 3rd September, 2013. The following order is passed by the National Commission:

ORDER

Counsel for the Appellants has circulated a letter stating that he has received written instructions from the Appellants to seek withdrawal of First Appeal, so as to enable them to approach the Civil Court.

In view of the above, First Appeal is dismissed as withdrawn.

11. It can thus be seen that so far as the findings of the State Commission are concerned the same have become final by virtue of Section 24 of the said Act. The question is whether the suit is hit by the principles of Res-judicata. The respondents'

contention is that complicated matters involving medical negligence can best be adjudicated by the Civil Court as expert evidence is required in complicated civil cases.

12. Let me first refer to some of the relevant provisions of the said Act in the present context. The Preamble says that this is an Act to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. The some of the relevant definitions would be **Section 2(e)** "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or dispute the allegations contained in the complaint ;

Section (p) "State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9.

13. The composition of the State Commission is provided in **Section 16**. **Section 17** provides for - Jurisdiction of the State Commission. **Section 24** provides that every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

14. **Section 13** deals with the procedure on admission of complaint. **Sub-section (3)** of Section 13 says that no proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with. **Sub-section (3-A)** provides that every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities. The proviso to Sub-section (3-A)

mentions that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum.

15. **Sub-section (4) and (5)** of Section 13 read thus :-

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,
- (ii) the discovery and production of any document or other material object producible as evidence,
- (iii) the reception of evidence on affidavits,
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source,
- (v) issuing of any commission for the examination

of any witness, and

(vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

16. **Section 24** of the said Act deals with finality of the order of the Commission which reads thus :-

24. Finality of orders.—Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

17. A reading of the above provisions would indicate that in a case of medical negligence the complainant can approach the Fora under the said Act by filing a complaint. The Act provides for an elaborate procedure for entertaining the

complaint and for grant of compensation. Sub-section (3) of Section 13 provides that no proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with. The object of establishing the Consumer Forum is spelt out from sub-section (3-A) of Section 13 in as much as the same is to provide speedy remedy for deciding the complaints. Even the proviso to sub-section (3-A) says that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum. Sub-section (4) is a provision which vests the Forum with the same powers as are vested in the civil Court under the Code of Civil Procedure while trying the suit in respect of summoning and enforcing the attendance of any defendant or witness and examining the witness on oath, the discovery and production of any document or other material object producible as evidence, the reception of evidence on affidavits, etc. Further every proceeding before the District

Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 18 says that the provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission. **Section 14** is a provision which empowers the State Commission to issue appropriate directions and reliefs, which includes the relief for payment of compensation.

18. It would thus be seen that the State Commission is competent to grant all reliefs which a civil Court of competent jurisdiction can grant. The object of the Act is to provide for speedy remedy to the complainant. An elaborate procedure has been prescribed for dealing with the complaint. The State Commission is also empowered to issue summons and enforcing

attendance of the defendants or the witnesses for examining them on oath.

19. Though learned counsel relied upon several decisions of the Apex Court in support of their respective contentions, the issue involved in the present Petition can best be answered by placing reliance on the decision of the Apex Court in the case of **V. Kishan Rao** (*supra*). In this context it will be profitable to refer to paragraphs 36, 37, 38 and 39 of the decision of the Apex Court which read thus :-

“36. About the requirement of expert evidence, this Court made it clear in Indian Medical Association that before the Fora under the Act both simple and complicated cases may come. In complicated cases which require recording of evidence of expert, the complainant may be asked to approach the civil court for appropriate relief. This Court opined that [Section 3](#) of the Act provides that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Thus the Act preserves the right of the consumer to approach the civil court in complicated cases of medical negligence for necessary relief. But this Court held that cases in which complicated questions do not arise the Forum can give redressal to an aggrieved consumer on the basis of a summary trial on

affidavits.

37. The relevant observations of this Court are:

"...There may be cases which do not raise such complicated questions and the deficiency in service may be due to obvious faults which can be easily established such as removal of the wrong limb or the performance of an operation on the wrong patient or giving injection of a drug to which the patient is allergic without looking into the out-patient card containing the warning [as in *Chin Keow v. Govt. of Malaysia*, 1967 (1) WLR 813(PC)] or use of wrong gas during the course of an anesthetic or leaving inside the patient swabs or can best be other items of operating equipment after surgery. One often reads about such incidents in the newspapers. The issues arising in the complaints in such cases can be speedily disposed of by the procedure that is being followed by the Consumer Disputes Redressal Agencies and there is no reason why complaints regarding deficiency in service in such cases should not be adjudicated by the Agencies under the Act. In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the civil court for appropriate relief. [Section 3](#) of the Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the civil court for necessary relief..."

38. A careful reading of the aforesaid principles laid down by this Court in *Indian Medical Association* (supra) makes the

following position clear:-

(a) There may be simple cases of medical negligence where expert evidence is not required.

(b) Those cases should be decided by the Fora under the said Act on the basis of the procedure which has been prescribed under the said Act.

(c) In complicated cases where expert evidence is required the parties have a right to go to the Civil Court.

(d) That right of the parties to go to Civil Court is preserved under [Section 3](#) of the Act.

39. The decision in Indian Medical Association (supra) has been further explained and reiterated in another three judge Bench decision in [Dr. J. J. Merchant and others vs. Shrinath Chaturvedi](#) . The three Judge Bench in Dr. J. J. Merchant (supra) accepted the position that it has to be left to the discretion of Commission

"to examine experts if required in an appropriate matter. It is equally true that in cases where it is deemed fit to examine experts, recording of evidence before a Commission may consume time. [The Act](#) specifically empowers the Consumer Forums to follow the procedure which may not require more time or delay the proceedings. The only caution required is to follow the said procedure strictly." [para 19, page 645 of the report] [Emphasis supplied] “

20. It would also be material to refer to paragraphs 56

and 57 which read thus :

56. This Court however makes it clear that before the consumer Fora if any of the parties wants to adduce expert evidence, the members of the Fora by applying their mind to the facts and circumstances of the case and the materials on record can allow the parties to adduce such evidence if it is appropriate to do so in the facts of the case. The discretion in this matter is left to the members of Fora especially when retired judges of Supreme Court and High Court are appointed to head National Commission and the State Commission respectively. Therefore, these questions are to be judged on the facts of each case and there cannot be a mechanical or strait jacket approach that each and every case must be referred to experts for evidence.

57. When the Fora finds that expert evidence is required, the Fora must keep in mind that an expert witness in a given case normally discharges two functions. The first duty of the expert is to explain the technical issues as clearly as possible so that it can be understood by a common man. The other function is to assist the Fora in deciding whether the acts or omissions of the medical practitioners or the hospital constitute negligence. In doing so, the expert can throw considerable light on the current state of knowledge in medical science at the time when the patient was treated.

(emphasis supplied by me)

21. For examining the present case in the light of the law

laid down by the Apex Court it would be material to reproduce paragraph 10 of the order passed by the State Commission which records what has been stated in the affidavit of Dr. Jennifer :-

“(10) Affidavits of Opponent Dr. Suhil and Opponent Dr. Jennifer who immediately attended the baby, particularly, the affidavit of Opponent Dr. Jennifer further give details about the condition of the baby from time to time and the treatment given to the baby. In her affidavit, Opponent Dr. Jennifer described the same as follows :-

“... As per information of Dr. Suhil I reached in NICU of our department. When I examined the baby, it was as per information of Dr. Suhil a male baby of 30 weeks & weight 1 kg. 100 gm. Baby was already put on Oxygen. The immediate examination revealed that his heart beats till that time were normal and his breathing was laboured although baby was cold i.e. in the state of Hypothermia, though baby was put under Radiant warmer to counter Hypothermia and immediately put on nasal CPAP (Continuous Positive Airways pressure). Before that Dr. Suhil had already put baby on I/V line and had collected sample for ABG (Arterial Blood Gases) & other essential laboratory investigation. He had already taken Chest X-ray, of baby as per my instructions to Dr. Suhil on telephone. This process was going on till 8.00 PM.

In the meanwhile baby developed Apnea i.e. Cessation of respiration intermittently for few seconds. Baby was also suffering from Grunting Respiratory distress, cyanosis. Cyanosis implies blue discoloration of skin, nails, tips of ear, face etc. due to acute inadequacy and starvation of Oxygen to Baby. In order to manage above complications, artificial

Respiration, ventilatory support by endotracheal intubation was immediately resorted to with the help of Dr. Sohil, Dr. Kolekar and NICU sister and I resorted to endotracheal intubation with 2.5 mm size portex endotracheal tubes. In the second attempt Endotracheal intubation was successful and baby was immediately put on ventilatory support attached to endotracheal tube. Such ventilatory support was invariably very very essential to counter Apnea, Respiratory Distress, cyanosis by Oxygenation through this Advanced Life Support System i.e. ALS i.e. ventilatory support by virtue IPPV – which signifies INTERMITTENT POSITIVE PRESSURE VENTILATION.

Here it is important and pertinent to note that before Endotracheal intubation of baby I asked nurse in NICU to open the packings of 4 tubes of 2 mm size and 4 tubes of 2.5 mm. size as intubation was a dire emergency and looking to need of hour when any doctor starts intubation, the essential time for opening the packing of extra endotracheal tube for reintubation is not available, in case of failure of attempt to intubate the tube. The losing of precious time even fraction of second can not be wasted at that time and hence, packing opened endotracheal of different sizes must be required at hand. With this oncoming anticipated clinical complication I had directed nurse in NICU to pen packings of 4 tubes of 2 mm. size and 4 tubes of 2.5 mm. size. But in instant said case of Complainant's baby, the Endotracheal intubation was successful in second attempt only with 2.5 mm. size portex tube with the help of infant Laryngoscope.

Laryngoscope which was kept ready by Dr. Suhil as per my and Dr. Dhanwade's instructions on telephone to keep all essential equipment ready for post birth management of critical complications of preterm baby which was expected due to preterm status of the baby and worst obstetric History of the Complainant No.1 i.e. Sou. Sangeeta Danane. The critical and serious condition of baby was informed to Dr. Dhanwade on telephone.

Despite all the life saving measures as stated above, the baby was facing the crisis of bradycardia (Low number of heart beats or Heart beats less than 60 per minutes). To counter this bradycardia immediately Epinephrine i.e. Adrenalin was administered to baby in intra tracheal route, and Ambu Bag Respiration was also given. Not only this but to counter continuing bradycardia drug Adrenaline was given by I/V route for two times. In spite of these extensive and vigorous wholeheartedly efforts and attempts by expert team of doctors clinical condition of baby deteriorated to considerable extent. Meanwhile Dr. Dhanwade also came at about 8.25 P.M. and examined baby. Dr. Dhanwade also realized the every critical, serious condition of baby as well as bad oncoming prognosis. I explained everything about bad anticipated oncoming critical crisis and outcome of very bad prognosis due to Hyaline Membrane disease (HMD) i.e. Neonatal Respiratory Distress Syndrome which very common complication in respect of preterm babies, more in so preterm babies coupled with Low weight Birth babies in addition to worst obstetric history of Mother.

After taking all measures of cardiopulmonary Resuscitation, ventilatory support, chest compression etc. as per established protocol standards of pediatric science, due to deteriorating medical condition of bay, unfortunately died at about 8.45 P.M. with lot of sorrow, I had to leave NICU as I was called for other emergency work in department.”

22. It is also material to note that before the State Commission the respondents had seriously challenged the presence of Dr. Jennifer and even the treatment given to the

baby. The State Commission found that Dr. Sohil who attended the baby cannot be said to be incompetent to handle the situation or that he was not a competent doctor. It is observed that Dr. Sohil is attached to pediatrician department of the Hospital and he handled the situation during the cesarean and after the birth of the baby, particularly, hypoxia condition of the baby. The Forum found that the baby did cry as a result of right efforts of Dr. Sohil and was stable at that point of time. The baby was also shown to his father the respondent No.1 and other relatives present in the hospital and then taken to NICU for further treatment. The State Commission after considering the materials then concluded that all necessary procedures as per standard medical protocol in the given circumstances were followed.

23. Thus the order passed by the State Commission would reveal that based on the materials on record it concluded that this was not a case of medical negligence. The respondents never requested the State Commission for permission to adduce

evidence of experts to prove medical negligence. In fact the respondents submitted to the jurisdiction of the State Commission and the also filed affidavits to prove the case of medical negligence. The Apex Court has held that the general direction given to have expert evidence in all cases of medical negligence is not consistent with the principle laid down by the larger bench in paragraph 19 in **Dr. J.J. Merchant and others vs. Shrinath Chaturvedi** reported in (2002) 6 SCC 635.

24. In view of what is held by the Apex Court in paragraph 56 in **V. Kishan Rao's** case (*supra*) it was for the respondents to have made a request to the State Commission to adduce expert evidence whereupon the members of the Fora by applying their mind to the facts and circumstances of the case and the materials on record could have allowed the parties to adduce such evidence if it were appropriate to do so in the facts of the case. As held by Their Lordships, the discretion in this matter is left to the members of Fora especially when retired

judges of High Court are appointed to head the State Commission. It is equally settled that these questions have to be judged on the facts of each case and there cannot be a mechanical or strait jacket approach that each and every case must be referred to experts for evidence.

25. It can thus be seen that in the facts of the present case the State Commission on the basis of the affidavits of doctors submitted by either side, the medical case papers and other materials on record came to the conclusion that there has been no medical negligence. On a detailed analysis of the materials the State Commission concluded that the proper procedure by the competent doctors was followed in the matter of providing medical treatment to the baby. Thus there was ample material on record to enable the State Commission to conclude that this is not a case of medical negligence. No doubt, in complicated cases where the expert evidence is required, the right of the parties to approach the civil Court is preserved under Section 3 of the Act. It is not even the respondents' case

that they requested the State Commission for permission to adduce expert evidence.

26. The Apex Court in the case of **Laxmi Engineering Works vs. P.S.G. Industrial Institute** reported in **1995(3) SCC 583** in paragraph 10 has observed thus :-

“A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself, any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to- business" disputes. This scheme of the Act in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal.”

Their Lordships after considering the nature and powers of the authorities created by the said Act in paragraph 13 observed that the orders of the District Forum, State Commission and National Commission are final as declared in Section 24 and cannot be questioned in a civil court. The Issues decided by the said authorities under the Act cannot be re-agitated in a civil court. It is further held that even if the Forum/Commission decides the said questions wrongly, their orders made following the procedure prescribed in sub-sections (1) and (2) of Section 13 cannot be questioned in a civil court, except of course, in situations pointed out in Dhulabhai's case (*supra*). They can and must be questioned, only in the manner provided in the Act.

27. It can thus be seen that the respondents subjected themselves to the jurisdiction of the State Commission and were granted opportunity to adduce evidence in support of their claim. No breach of principles of natural justice is alleged. Neither is it the case of the respondents that the procedure provided for dealing with the complaint is not followed. The

respondents never made a request before the State Commission for adducing expert evidence in which case the State Commission could have examined this request in terms of the law laid down by the Apex Court in the case of **V. Kishan Rao** (*supra*). On the contrary, the State Commission permitted the respondents to adduce evidence in support of their claim which they have availed. It is worth noting that in the plaint there is not even a whisper about the proceedings before the State Commission. Not only a finality is provided to the decision of the State Commission but the Apex Court has even held that the said decision cannot be made subject matter of challenge before the Civil Court. Having elected the remedy of approaching the State Commission and invited a decision, by now approaching the civil Court the respondents are virtually seeking negation of the State Commission's decision. It is impermissible for respondents to do something indirectly which they cannot do directly. On the same set of facts and for the same cause of action as before the State Commission, the respondents by filing the suit want to get over the order of the State Commission on

the premise that it is only before the civil Court that medical negligence can be proved by adducing expert evidence.

28. **Section 24** of the said Act gives finality to the order passed by the State Commission. It is not the case of the respondents that the provisions of the said Act are not followed while deciding the complaint. It is also not the case of the respondents that the State Commission has not acted in conformity with the fundamental principles of judicial procedure.

29. The upshot of the above discussion is thus :-

The respondents by filing an elaborate complaint of medical negligence before the State Commission prayed for a direction directing the petitioners to pay compensation of Rs.96,50,000/-. After giving an opportunity to parties to file affidavits in support of their claims and considering all the materials on record, the State Commission recorded a finding that there has been no negligence on the part of the petitioners.

The complaint came to be dismissed. Having filed the complaint before the State Commission it was always open for the respondents to have requested for adducing expert evidence in which case the members of the State Commission by applying their mind to the facts and circumstances of the case and the materials on record could have considered this request whether to allow the respondents to adduce such evidence if it is appropriate to do so in the facts of the case. The discretion in this matter is left to the members of State Commission especially when retired judges of High Court are appointed to head the State Commission. The Apex Court has held that these questions are to be judged on the facts of each case and there cannot be a mechanical or strait jacket approach that each and every case must be referred to experts for evidence.

30. The respondents having prosecuted the complaint before the State Commission without success, the suit is then filed for nominal compensation of Rs.22,50,000/-. It is material to note that in the Plaint there is not even a whisper about filing

of the complaint before the State Commission and the order passed thereon.

31. As indicated earlier the respondents did not even make a request to the State Commission that they want to adduce expert evidence. On the contrary, before the State Commission, in order to substantiate the plea of medical negligence, the respondents adduced evidence, filed the affidavits of evidence of the doctors in support of their case and every possible opportunity was given by the State Commission to prove the respondents' case of medical negligence. It is only after considering the entire materials on record and the evidence so placed by way of affidavits, the State Commission came to a definite conclusion that the case of medical negligence alleged is not proved. It was always open for the respondents to have made a request for adducing expert evidence which could have been considered by the State Commission in the light of the law laid down by the Apex Court.

32. The respondents having failed to prove the case of medical negligence before the State Commission are not justified in approaching the civil Court on the very same facts by taking recourse of Section 3 of the said Act. Once the complaint filed on the same set of facts before the State Commission is rejected on merits after following the procedure laid down by the said Act, in my opinion, the matter is directly and substantially in issue before the civil Court having been already decided finally in the complaint filed between the same parties before the State Commission competent to decide the same. Merely because the Appeal filed before the National Commission has been withdrawn to enable respondents to approach the Civil Court will not take away the efficacy of the decision rendered by the State Commission in view of finality attached to the State Commission's decision in terms of Section 24 of the said Act. The trial Court committed the error in holding that the suit is not barred by the principles of resjudicata.

33. The impugned judgment and order deserves to be quashed and set aside. The Writ Petition is allowed in terms of prayer clause (a) with no order as to costs.

(M.S.KARNIK, J.)