IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.4314 of 2012
and
MP No.1 of 2012

A. Narayanan ... Petitioner

Vs

1. State of Tamil Nadu,
Rep. by the Secretary to Government,
Department of Health and Family Welfare,
Fort St. George,
Chennai - 600 009.

2. Government Dental College and Hospital,
Rep. by its Dean,
Sri Muthuswamy Salai,
Park Town,
Chennai - 600 003.

3. Rajiv Gandhi Government General Hospital,
Rep. by its Dean,
No.1, EVR Periyar Salai,
Opposite Central Railway Station,
Park Town,
Chennai - 600 003. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents herein to give appropriate medical attention to the petitioner with respect to the broken needle embedded in his lower jaw including by removal of the needle and to accord him further necessary treatment and further direct the respondents to pay a provisional compensation of Rs.2 lakhs to the petitioner for the hardship and mental agony suffered by him as a result of the negligence of the second and third respondents in performing the surgery which resulted in a needle being broken and embedded in the petitioner's jaw for doing the suturing procedure with the broken needle inside; for not removing the needle during the operation performed to retrieve the needle and subsequently for not removing the broken needle.

For Petitioner : Mr.V. Prakash
Senior Counsel
for
M/s.Ramapriya Gopalakrishnan

For Respondents: Mr.G.K.Muthukumar
Special Government Pleader
for R1 to R3

ORDER

This writ petition has been filed for a Mandamus to direct the respondents to pay a provisional compensation of Rupees Two lakhs for the medical negligence committed by them in embedding a broken needle in the petitioner's lower jaw and also for the mental agony suffered by him, as a result of the alleged medical negligence.

2. It is the case of the petitioner that the second and third respondent Hospitals are funded and managed by the Government of Tamil Nadu and are instrumentalities of the State and amenable to the Writ jurisdiction.

3. According to the petitioner, on 29.01.2012, he had a severe fall at Rajaji Main Road, Nungambakkam, Chennai. As a result of the said fall, he suffered bleeding injuries on his chin, jaws and left heel. As a result of the same, he felt dizzy and reached his house after some time with the help of his wife. According to him, he was suffering from severe pain and there was a swelling on his chin and lower jaw, but he hoped that he would regain good health in a couple of days, after he takes rest at home.

4. It is the case of the petitioner that his condition did not improve and the swelling on his lower jaw increased. In such a situation, two days later i.e. on 02.02.2012, he went to the Government Dental Hospital for treatment. As the X-ray of the petitioner's jaw initially taken in the hospital was not clear, he was advised to take digital X-ray in a private X-ray centre namely, Smile Digital X-Rays and accordingly, he had an X-ray taken there. The X-ray revealed that he suffered a fracture in his lower jaw. The X-ray also revealed that there is a crack in his upper jaw on the left side. According to the petitioner, Dr.Rohini, a third year student, who was acting under the instructions of Chief Dr. Saravanan attended to him. According to the petitioner, Dr. Rohini informed him that two plates must be fixed in his jaws and the surgery could be done only after fixing a clip on his teeth and asked him to return after four days for fixing the clip. According to the petitioner on 06.02.2012, a clip was fixed in his teeth.

5. It is the case of the petitioner that on 08.02.2012, he underwent a surgery on his jaw. It is his case that surgery was performed by Dr. Rohini, a third year student. After the surgery was performed, the lower jaw of the petitioner was being stitched and there was a lot of bleeding in the area. It is the case of the petitioner that due to the negligence of the Doctors attending on him, a broken stitching needle was embedded in his lower jaw during the suturing procedure.

6. It is the case of the petitioner that Dr. Rohini, however did not inform him about the broken needle embedded in his lower jaw. According to the petitioner, she told him that X-ray of his mouth needed to be taken to check if the plates have been properly fixed in his jaw. According to the petitioner, the bleeding was temporarily stopped and he was taken for an X-ray. The X-ray revealed the presence of the broken needle in the petitioner's lower jaw. According to the petitioner, the broken needle was not removed from the gum of his lower jaw.

7. It is the case of the petitioner that after the X-ray was taken, he felt drowsy and was taken to bed. Once again, there was lot of bleeding from his mouth and he became unconscious. Once again, according to the petitioner, some steps were taken by the Doctors present there to stop the bleeding. It is the case of the petitioner that Dr. Rohini, who performed the surgery in the lower jaw of the petitioner had also fainted on seeing the excess bleeding from the petitioner's mouth and she was administered I.V. fluid in the same ward on a bed next to the petitioner. After the petitioner regained consciousness, Chief Doctor Saravanan and Dr. Uma Maheswari referred the petitioner to Rajiv Gandhi Government General Hospital due to the excess bleeding in the petitioner's mouth for further treatment.

8. It is the case of the petitioner that on the same day i.e. 08.02.2012, he was admitted at Rajiv Gandhi Government General Hospital for further treatment. Dr. Vijay from the Government Dental Hospital came along with the petitioner to the General Hospital and the petitioner was given blood and glucose by I.V. drip. On 09.02.2012, a fitness certificate was obtained from the anaesthetist in the General Hospital. Thereafter, on 10.02.2012, another operation was performed on the jaw of the petitioner to remove the embedded needle.

9. It is the case of the petitioner that despite the operation, the needle was not removed. According to him, an X-ray was taken on 11.02.2012 which confirmed that the needle was still inside the gum of the petitioner's lower jaw. According to the petitioner, he was discharged from the hospital on

11.02.2012. On the day of discharge, the petitioner was informed by Chief Doctor Saravanan that Dr. Rohini has got exams in the first week of April and only after her examinations are over towards end of the April, she would perform an operation to remove the needle.

10. It is the case of the petitioner that his jaw has gone numb in the place, where needle is embedded. It is also the case of the petitioner that he was suffering from great mental agony on account of fear that the presence of the needle in his gum will result in infection and also the fear that the needle will enter the blood stream and affect his other organs. It is his case that on account of the distress and psychological trauma, he was facing as a result of the needle embedded in his jaw, he was unable to turn over and sleep on the right side. According to the petitioner ever since the accident, he has been surviving only on fluids and he is unable to eat any solid food.

11. It is the case of the petitioner that on 21.02.2012, he again went to the Dental Hospital and requested for removal of the broken needle. Again, he was informed by Chief Doctor Saravanan that the surgery would be performed only in the end of April. According to the petitioner, this will clearly indicate the callous attitude of the Doctors to indigent patients who wield no power or influence even while the second and third respondent hospitals are being run for the benefit of the poor and the underprivileged.

12. According to the petitioner, he has suffered great hardship due to the medical negligence committed by the respondents. It is his case that he was working as a Driver and his wife works as a Nurse in a private hospital and earns a meagre income. According to him, they have two school going children, who are studying 4th standard and upper KG respectively. According to the petitioner, their family are residing in a rental accommodation and most of his wife's monthly income goes towards paying the monthly rent. It is his case that he and his wife are facing great financial hardship as the petitioner is not in a position to resume work as a Driver until the needle is removed from his jaw. It is also his case that the petitioner is not in a position to take treatment elsewhere to remove the needle from his mouth as that would involve considerable expenses, which he cannot afford.

13. According to the petitioner, right to health is part of the right to life guaranteed under Article 21 of the Constitution of India. According to him, the negligence and inaction of the second and third respondents to remove the broken needle from his jaw amounts to violation of the petitioner's fundamental right to good health and right to life.

According to him, the arbitrary, unfair, unjust and discriminatory manner in which he has been treated by the second and third respondent Hospitals amounts to violation of his fundamental right under Article 14 of the Constitution of India.

14. According to the petitioner, the second respondent Hospital has not adhered to the standard of care required to be adhered while performing the surgery as well as post surgical procedures. It is his case that the second respondent Hospital has been grossly negligent in leaving a foreign object in the petitioner's jaw which is causing distress and hardship.

15. According to the petitioner, the respondents are liable to compensate him for their negligence in performing the surgery which resulted in a needle being broken and embedded in his jaw; for doing the stitching with the broken needle inside; for not removing the broken needle during the operation performed to remove the needle and subsequently for not removing the broken needle as a result of which, he is suffering great hardship and undergoing psychological trauma.

16. In the aforementioned circumstances, the petitioner is seeking for a direction to the respondents to pay a provisional compensation of Rupees two lakhs from the respondents and also reserves his right for further damages from the respondents by taking appropriate legal action on account of the medical negligence.

17. A counter affidavit has been filed by the second and third respondents stating that the writ petition is not maintainable as in case of medical negligence, the only remedy is to approach a Civil Court.

18. According to the respondents, the petitioner came to the Tamil Nadu Government Dental College on 02.02.2012 complaining that he had a severe fall on 29.01.2012 with swelling and bruises on his chin. Immediately an X-ray was taken which showed fracture in the lower Jaw. The respondents deny the allegations of the petitioner that he was advised by the Doctors of the respondent Hospitals to take a digital X-ray from a private lab. According to them, the truth is that the petitioner was doubtful about the quality of the X-ray taken at the Government Dental College on 02.02.2012 and hence on his own volition, he took an X-ray at a private lab known to him on 03.02.2012 which also proved the fracture in his lower jaw. According to them, there was no fracture in the upper jaw of the petitioner as contended by him.

19. The respondents admit that the case of the petitioner was allotted to II year PG student Dr. Rohini (Not a III year B.D.S. student as contended by the petitioner) for immediate treatment. Dr. Rohini examined the petitioner and prepared the

clinical notes pertaining to the injuries sustained and his previous medical history. According to the respondents, it was learnt that the petitioner was a known hypertensive. It is their case that the petitioner was advised to come on 06.02.2012 for Intermaxillary Fixation (fixing a clip on the teeth) and the treatment was given accordingly on the same date.

20. The respondents have also denied the contention of the petitioner that Dr. Saravanan gave instructions. According to them, at no point of time, Dr. Saravanan was involved with the whole incident as contended by the petitioner.

21. According to respondents, Para Symphysis Fracture Surgery was performed on the petitioner on 08.02.2012. According to them, since the patient was hypertensive and the operation was done by giving local anaesthesia, the BP got elevated with a profuse bleeding. While the attempts were being made by the Operating Team of Doctors, viz., Dr. Durairaj and Dr. Rohini to ligate the blood vessel, the petitioner had been highly non co-operative. According to them, the petitioner's scuffle resulted in the breakage of the needle and the same was immediately informed to the petitioner's family members and it was also noted in the OP ticket itself. Therefore, according to them, the allegation made by the petitioner that he was not informed about the broken needle is false.

22. According to the respondents, X-ray was taken after the surgery which confirmed the presence of the broken needle. Since the BP of the petitioner was highly elevated and the patient went in for a syncopal attack, the needle could not be removed immediately. According to them, the petitioner was immediately admitted in Rajiv Gandhi Government General Hospital on 08.02.2012 for further clinical treatment for reducing the BP. At the casualty emergency medicine ward, the petitioner's BP was recorded as 150/110.

23. According to the respondents on 09.12.2012, a fitness certificate was obtained from the anaesthetist of the Government Hospital as he was hypertensive. An X-ray taken on the same day confirmed the presence of the needle and the petitioner was well aware of this and another attempt was made to remove the needle under Conscious sedation on 10.02.2012 by Professor and Head of the Department Dr. G. Uma Maheswari. As the BP was constantly in an elevated state because of the petitioner's anxiety, he was not given general anaesthesia. On starting of the surgery, the petitioner's Blood Pressure (BP) recorded 150/110. It is the case of the respondents that only due to the inherent aggressiveness and non co-operation, the needle could not be removed from the petitioner on that day. According to

respondents, the petitioner got discharged himself against medical advice on the request of his relatives and his wife. According to respondents, the petitioner was informed about the needle breakage and consequences of the same on 11.02.2012. The petitioner was further informed that a surgery would be performed after 10 days after controlling his hypertension and getting anaesthetic fitness under general anaesthesia for which he had conceded.

24. According to the respondents, the petitioner's contention of lower jaw becoming Numb because of the embedded needle is totally wrong and misconceived as the needle was there in his buccal soft tissues and not embedded in the lower jaw. According to the respondents, it is not the needle that caused sleep deprivation, but it is the fracture on the right side body which could constrain his movements in the sleep and the numbness is one of the consequences of sustaining a fracture in body region of the lower jaw. According to respondents, the petitioner cannot take solid food, only because he sustained two fractures one in the right body region and another in the left subcondylar region and not due to the non-removal of the needle, as falsely contended by the petitioner.

25. According to the respondents, the petitioner did not meet Professor Dr. Saravanan on 21.02.2012 and it is also denied that the petitioner was not informed that the needle will be removed only at the end of April.

26. According to the respondents, the Government Doctors professional attitude could not be attributed with derogatory remarks and pungent criticism. According to the respondents, on an average the hospital has outpatient strength of more than 1000 economically poor patients everyday. It is their case that the hospital enjoys the reputation of one of the best Government Hospitals in the country. According to them, the petitioner's contention that the Government Hospital Doctors have a callous and indifferent attitude towards indigent patients is totally wrong and does not find a place in reality.

27. According to respondents on 21.02.2012, the petitioner was reviewed and the healing was found to be satisfactory. It is further stated in the counter affidavit that pursuant to the directions of this Court, the petitioner was admitted on 24.02.2012 and the needle was removed on 25.02.2012 under general anaesthesia at Rajiv Gandhi General Hospital.

28. According to the respondents, the case on hand cannot be considered as a case of medical negligence as the petitioner was attended with great care. Therefore, they are not liable to pay any compensation to the petitioner as claimed by him in

this writ petition.

29. Heard Mr.V.Prakash, learned Senior Counsel for the petitioner and Mr.G.K.Muthukumar, learned Special Government Pleader for the respondents.

30. The learned Senior counsel for the petitioner submitted that since there is no dispute with regard to the embedding of a needle on the petitioner's lower jaw, the medical negligence has been established and hence the respondents are liable to compensate the petitioner. He drew the attention of this Court to the counter affidavit filed by the respondents and in particular, he referred to the paragraphs, wherein they have admitted that surgery was completed on the petitioner without removing the embedded needle in the jaw of the petitioner.

31. The learned Senior Counsel for the petitioner drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of Dr.D.K.Basu, Ashok K.Johri versus State of West Bengal, State of Uttar Pradesh, dated 18.12.1996 and submitted that a claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty is maintainable. According to him, the protection of which was guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available under private law for damages for tortious act of public servants.

32. According to the learned Senior Counsel for the petitioner, as per the aforesaid decision, the monetary compensation for infringement of the indefeasible right to life of the citizen is the only effective remedy to heal the wounds of the victim.

33. The learned Senior Counsel for the petitioner also relied upon the following decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi, Delhi versus Uphaar Tragedy Victims Association and others reported in 2011 14 SCC 481 for the same proposition.

34. The learned Senior Counsel for the petitioner also drew the attention of this Court to the case of P.Arumugam versus The State of Tamil Nadu, Chennai and two others passed on 30.09.2015 in W.P.(MD) No.8861 of 2013, involving a claim for medical negligence. In the aforesaid order, a learned Single Judge of this Court considered the request of the petitioner to grant compensation and awarded a sum of Rs.10,00,000/- as compensation on account of medical negligence.

35. The learned Senior Counsel for the petitioner also drew the attention of this Court to a recent decision of the

Hon'ble Supreme Court in the case of Arun Kumar Manglik versus Chirayu Health and Medicare Private Limited and another reported in (2019) 7 SCC 401 and submitted that since the respondents have not treated the petitioner with a reasonable degree of skill and knowledge, the respondents are liable to compensate the petitioner.

36. Per contra, the learned Special Government Pleader for respondents would submit that the respondents deny the allegations of the petitioner that there was medical negligence on the part of the hospital and the Doctors who attended the petitioner. According to him, only due to the petitioner being a hypertensive patient and his non co-operation, the needle embedded in the lower jaw of the petitioner was not removed at the first instance. Further, it is contended by the learned Special Government Pleader that the petitioner got himself discharged from the hospital against medical advice on 09.02.2012 and that is the reason for non removal of the needle. It is submitted by the learned Special Government Pleader for respondents that the petitioner's contention that his lower jaw became Numb due to the needle was totally wrong and misconceived as the needle was found in the buccal soft tissues and not embedded in his lower jaw. Further according to him, the sleeplessness alleged by the petitioner is not due to the embedding of the needle in the petitioner's lower jaw but only due to the fact that the petitioner sustained fracture in the right side of his body which restricted his movements in his sleep and the numbness is one of the consequences of sustaining a fracture in body region of the lower jaw. Further, it is submitted by learned Special Government Pleader that the petitioner was unable to take solid food, only due to the fact that he had sustained two fractures one in the right body region and another in the left subcondylar region and not due to the non-removal of the needle.

37. It is also contended by the learned Special Government Pleader for respondents that after filing of the writ petition and pursuant to the directions issued by this Court on 24.02.2012, the broken needle from the petitioner's jaw was removed from the petitioner on 25.02.2012 after giving general anaesthesia at Rajiv Gandhi Government General Hospital. Therefore, according to him, no pain, hardship or mental agony has been suffered by the petitioner and therefore, the respondents are not liable to pay compensation. It is further submitted by the learned Special Government Pleader that due care was taken by Doctors who treated the petitioner and hence the standard of care which is expected of a medical professional was given and there was no medical negligence on the part of the respondents. It is also submitted by the learned Special Government Pleader for respondents that the judgments relied

upon by the learned Senior Counsel for the petitioner are not applicable to the facts of the instant case as there are disputed questions of fact involved. According to him, the only remedy for the petitioner is to approach the Civil Court by letting in oral and documentary evidence and hence, the writ petition is not maintainable.

Discussion :

38. Admittedly in the case on hand, as seen from the counter affidavit filed by the second and third respondents, after Para Symphysis fracture surgery was performed on the petitioner on 08.02.2012, a broken needle was found embedded in the lower jaw of the petitioner, as seen from the X-ray taken thereafter. It is also an admitted fact that only pursuant to the directions issued by this Court on 24.02.2012, the respondents removed the broken needle from the petitioner's jaw on 25.02.2012. Therefore, the allegations of the petitioner that the broken needle was embedded in the jaw and the lower jaw was sutured thereafter, without removing the broken needle is established. If standard of care which is expected of a normal medical practitioner was followed, such an incident would never have happened. The respondents may state that the petitioner was non cooperative and was a hypertensive patient but that cannot be a ground for embedding a needle in the petitioner's jaw and suturing the gum after completion of the surgery. This will clearly prove that the medical negligence committed by the respondents while treating the petitioner.

39. A 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. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

40. In the case on hand, the case of the petitioner is that he was operated by a third year BDS student but the same has been disputed by the respondents and they have stated that a Post Graduate student who is a qualified dentist operated the petitioner. However, as seen from the non removal of the needle from the petitioner's jaw, it is evident that the standard of care which is expected of a medical professional in treating patients has not been followed and a Doctor with a reasonable degree of skill and knowledge has not performed the operation on the petitioner.

41. In the case on hand, the petitioner was a Driver, and it is his case that because of the medical negligence committed by the respondents, he has been unable to go for work and earn

his livelihood. It is also his case that his wife is a Nurse and they have got two children and because of loss of income to the petitioner, he and his family are facing financial distress. The financial distress claimed by the petitioner has also not been disputed by the respondents in their counter affidavit.

42. The Hon'ble Supreme Court in the case of Dr.D.K.Basu, Ashok K.Johri versus State of West Bengal, State of Uttar Pradesh, dated 18.12.1996 relied by the learned Senior Counsel for the petitioner has held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts committed by public servants. The relevant portion of the said judgment reads as follows :

> The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation or the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong door and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

43. The Hon'ble Supreme Court has also held that the quantum of compensation payable based on strict liability will of course depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The Hon'ble Supreme Court has also held the relief to redress the wrong for the established invasion of fundamental rights of the citizen, under the public law jurisdiction is, in addition to the traditional remedies and not it derrogation of them. The relevant portion of the said judgment reads as follows :

> The quantum of compensation will of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, in addition to the traditional remedies and not it derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

44. In the case on hand, as far as embedding of the needle in the petitioner's lower jaw is concerned, there is no dispute whatsoever. As observed earlier, if normal standard of care was provided, such an incident would never have happened. Only due to the medical negligence of the Doctors employed by the respondents, the broken needle was not removed from lower jaw of the petitioner after the surgery. This being the undisputed case, following the decision of the Hon'ble Supreme Court in the case Dr.D.K.Basu, Ashok K.Johri versus State of West Bengal, State of Uttar Pradesh, dated 18.12.1996 on the ground of strict liability, the respondents are liable to compensate the petitioner.

45. In the recent decision of the Hon'ble Supreme Court in the case of Arun Kumar Manglik versus Chirayu Health and Medicare Private Limited and another reported in (2019) 7 SCC 401, the Hon'ble Supreme Court has traced the developments of law regarding medical negligence by referring to various Indian and foreign decisions and has held that a medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. The relevant portion of the said judgment reads as follows :

37.A two-Judge Bench of this Court in Kusum Sharma [Kusum Sharma v.Batra Hospital and Medical Research Centre, (2010) 3 SCC 480 : (2010) 1 SCC (Civ) 747 : (2010) 2 SCC (Cri) 1127] laid down guidelines to govern cases of medical negligence. Dalveer Bhandari, J. speaking for the Court, held: (SCC pp. 506-07, paras 89-90)

> "89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence, the following well-known principles must be kept in view:

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.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

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 other 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.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

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.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

90. In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that Doctors can never be prosecuted for medical negligence. As long as the Doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the Doctors must be able to perform their professional duties with free mind."
(emphasis supplied)

He referred to the Bolam [Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582] test and held thus: (Kusum Sharma case [Kusum Sharma v. Batra Hospital and Medical Research Centre, (2010) 3 SCC 480 : (2010) 1 SCC (Civ) 747 : (2010) 2 SCC (Cri) 1127] , SCC p. 501, para 72)

"72. The ratio of Bolam case [Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582] is that it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that the respondent charged with negligence acted in accordance with the general and approved practice is enough to clear him of

the charge. Two things are pertinent to be noted. Firstly, 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. Secondly, 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 point of time on which it is suggested as should have been used."

46. In the case on hand also, there has been carelessness and indifference shown by the Doctors while treating the petitioner as only due to their sheer negligence, the broken needle was embedded in the petitioner's jaw and not removed even after the surgery. The case of the petitioner is a classic case of medical negligence as it falls within the tests for medical negligence laid down by the Hon'ble Supreme Court in the decision referred to supra as there is clinching evidence to prove the medical negligence committed by the respondents namely the admission by them that the needle was embedded and not removed from the petitioner even after the surgery.

47. The petitioner has sought for a provisional compensation of a Rs.2,00,000/- on account of his suffering, hardship and mental agony, due to the medical negligence committed by the respondents. He also seeks liberty to approach the Civil Court towards any additional compensation.

48. This Court is of the considered view that the claim of the petitioner is a genuine one and it has to be granted though not for the entire sum of Rs.2,00,000/-.

49. The petitioner claims to be a driver and he has stated that due to medical negligence committed by the respondents, he lost his employment and is depending on his wife who is a nurse for his livelihood. The petitioner also claims that he has got two children and he is unable to support financially with the only income of his wife. The claim of the petitioner has also not been rebutted by the respondents in the counter affidavit filed by them. Eventhough, the petitioner is claiming a provisional compensation of Rs.2,00,000/-, this Court is of the considered view that considering his financial capacity, a sum of Rs.1,50,000/- will be adequate to compensate him temporarily for the medical negligence committed by the respondents. In case, the petitioner is not satisfied with the compensation fixed by this Court and seeks for any additional compensation, the only remedy available to the petitioner is to approach the civil court by letting oral and documentary evidence to substantiate his case for additional compensation. The first respondent being the State is vicariously responsible for the medical negligence committed by its Doctors.

50. In the result, this Court directs the first respondent to pay a sum of Rs.1,50,000/- to the petitioner as provisional compensation within a period of eight weeks from the date of receipt of a copy of this order.

51. With the aforesaid direction, the writ petition stands disposed of. No costs. However, the petitioner is granted liberty to approach the competent Civil Court if he seeks to claim additional compensation for the medical negligence committed by the respondents. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

vsi2

To

1. The Secretary to Government,
State of Tamil Nadu,
Department of Health and Family Welfare,
Fort St. George,
Chennai - 600 009.

2. The Dean,
Government Dental College and Hospital,
Sri Muthuswamy Salai,
Park Town,
Chennai - 600 003.

3. The Dean,
Rajiv Gandhi Government General Hospital,
No.1, EVR Periyar Salai,
Opposite Central Railway Station,
Park Town,
Chennai - 600 003.

+1cc to M/s.Ramapriya Gopalakrishnan, Advocate SR.No.17342

+1cc to Government Pleader SR.No.16718

W.P. No.4314 of 2012

KS(CO)
GMY(22/05/2020)