



## CIVIL LIABILITY OF DOCTORS FOR MEDICAL NEGLIGENCE: JUDICIAL APPROACH

**Dr. N. Brajakanta Singh, Dr. Chingri Vashum & Dr. O. Satyabati Devi**

*Assistant Professors, Department of Law, Dhanamanjuri University, Imphal, Manipur.*

**Paper Received On:** 21 APRIL 2026

**Peer Reviewed On:** 25 MAY 2026

**Published On:** 01 JUNE 2026

### *Abstract*

*The noble medical profession, dedicated to preserving life, also carries inherent risks, particularly as public expectations of healthcare have risen with changing times. It is imperative that doctors perform their duties with due care and diligence toward their patients. Any breach of these duties may give rise to a cause of action for medical negligence. When an undesirable outcome follows a medical procedure, doctors are often condemned, and in some cases, litigation is initiated against both the doctor and the hospital authority by the patient's family, alleging medical negligence. This paper examines the standard of care imposed on medical professionals and scrutinizes the extent to which this duty is applied in determining medical negligence jurisprudence in India. It further analyzes the civil liability of doctors in negligence cases through judicial precedents. Additionally, the paper explores various legislative provisions that address this issue. It argues that a balancing act on the part of the judiciary is essential to ensure justice for the victims' families without undermining the legitimate interests of medical professionals.*

**Keywords:** *Bolam test, civil liability, consumer, medical profession, negligence.*

### **I. Introduction**

Medical profession is one of the oldest professions of the world and is the most humanitarian one. There is no better service than to serve the suffering, wounded and the sick. Inherent in the concept of any profession is a code of conduct, containing the basic ethics that underline the moral values that govern professional practice and is aimed at upholding its dignity. Medical Ethics underpins the values at the heart of the practitioner-client relationship. Many a times, professionals are developing a tendency to forget that the self-regulation which is at the heart of their profession is a privilege and not a right and a profession obtains this privilege in return for an implicit contract with society to provide good, competent and accountable service to the public. The primary duty of this noble profession must be to serve humanity, otherwise this dignified profession will lose its true worth. Patients are entitled to be treated in accordance

with established, evidence-based medical norms, preventing medical practitioners from resorting to speculative, unproven, or experimental interventions when there is an absence of any credible scientific evidence or professional opinion. However, there are reports against doctors of unfair medical practices, misuse of diagnostic procedures, brokering deals for sale of human organs, etc. The high costs and investments involved in the delivery of medical care have made it a commercial activity wherein the professionals look to reaping maximum returns on such investment. This paper examines the judiciary evolved medical negligence jurisprudence in India and the civil liability of doctors in negligence cases through landmark judicial precedents. It also examines a recent judgment of the Supreme Court of India wherein the tortious liability of doctor is meticulously evaluated by the court and ruled that the legal heirs of deceased negligent doctor can be impleaded as parties for recovery of compensation from the estate of the deceased doctor. The old common law rule is that "a personal action dies with the person" once barred such claims from continuing after death. However, the Supreme Court of India has significantly modified this position, holding that while purely personal injury claims end with the patient's death, claims affecting the estate of the deceased can survive through legal representatives. In light of these developments, this paper endeavors to advance various contentions and explorations to establish that a balancing act on the part of the judiciary is desirable; not only to secure justice for the victims' families but also to protect the legitimate interests of medical professionals.

## **II. Evolution of medical negligence jurisprudence in India**

The judiciary evolved medical negligence jurisprudence in India can be traced way back in 1968. In an action for negligence in tort against a surgeon in the case of *Laxman Balkrishna Joshi v. Trimbak Bapu Godbole*,<sup>1</sup> the Supreme Court of India held that a doctor when consulted by a patient owes him certain duties, namely., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment and a breach of any of those duties gives a right of action for negligence to the patient. The court ruled that a medical practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. It was also observed that 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 require.

---

<sup>1</sup> 1968 SCC OnLine SC 260.

Later in the year 1996, in an epoch-making judgment, a three-judge bench of the Supreme Court of India, in the case of *Indian Medical Association v. V.P. Shantha and others*,<sup>2</sup> has dealt with the issues of medical negligence and laid down principles on which the liability of a medical professional is determined generally. The Supreme Court paved the way for adopting and applying the “Bolam Test” in the Indian landscape of medical negligence jurisprudence to determine the standard of care which is required from medical practitioners as laid down in the landmark English case of *Bolam v. Friern Hospital Management Committee*<sup>3</sup> which ruled: “[t]hat in the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. That is a perfectly accurate statement, as long as it is remembered that there may be one or more perfectly proper standards; and if he conforms with one of those proper standards, then he is not negligent... a mere personal belief that a particular technique is best is no defence unless that belief is based on reasonable grounds. That again is unexceptionable. But the emphasis which is laid by the defence is on this aspect of negligence, that the real question you have to make up your minds about on each of the three major topics is whether the defendants, in acting in the way they did, were acting in accordance with a practice of competent respected professional opinion. Mr. Stirling submitted that if you are satisfied that they were acting in accordance with a practice of a competent body of professional opinion, then it would be wrong for you to hold that negligence was established.” Applying the test in Indian scenario, the Supreme Court held that a doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. It was also held that in the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and a doctor is not negligent merely because his conclusion differs from that of other professional men. It was also made clear that the true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care.

While dealing with medical negligence in the case of *Spring Meadows Hospital v. Harjol Ahluwalia*,<sup>4</sup> the apex Court held that in cases of gross medical negligence the principle of *res ipsa loquitur* can be applied. The Court offered certain illustrations on medical negligence where the principle of *res ipsa loquitur* can be applied. It observed that gross medical mistake

---

<sup>2</sup> (1996) 86 COMP 806.

<sup>3</sup> (1957) 1 WLR 582.

<sup>4</sup> (1998) 4 SCC 39 In paragraph 10.

will always result in a finding of negligence and use of wrong drug or wrong gas during the course of anesthetic will frequently lead to the imposition of liability and in some situations even the principle of *res ipsa loquitur* can be applied. It also ruled that even delegation of responsibility to another may amount to negligence in certain circumstances. In other words, a consultant doctor will be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly.

Reference may be had to the judgment of *Jacob Mathew v. State of Punjab & Another*.<sup>5</sup> In this case also the Supreme Court has approved the Bolam test as laid down in *Bolam v. Friern Hospital Management Committee*<sup>6</sup> in its applicability to India. The Court laid down the following significant principles:

(1) 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. 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) 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.

(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

---

<sup>5</sup> (2005) 6 SCC 1.

<sup>6</sup> *Supra* note 3.

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.

### **III. Consumer Protection Acts and deficiency of services**

The meaning of consumer has changed in the country. The law concerning the use of service, availing of service, and deficiency in providing service protecting interests of consumers of the country is the Consumer Protection Act, 1986.<sup>7</sup> As far as the definition of consumer is concerned, we may refer to Section 2(7)(ii) of the Consumer Protection Act, 2019. According to the said clause, a consumer would mean a person who hires or avails of the services and includes any beneficiary of such services other than the person who hires or avails of the services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such services which beneficiary is other than the person who hires the services. In the case of *Indian Medical Association v. V.P. Santha*,<sup>8</sup> the Supreme Court of India observed that the medical practitioners are covered under the Consumer Protection Act, 1986 and the medical services rendered by them should be treated as services under section 2(1) (o) of the Consumer Protection Act, 1986. Similarly, under the Consumer Protection Act, 2019, the medical services fall under the ambit of services as mentioned in section 2(42). Any matter in medical negligence on the part of the service provider will be considered as deficiency under section 2(11) of the Consumer Protection Act, 2019. Any aggrieved person as a complainant can claim damages for medical negligence against a doctor or a hospital. Section 69(1) of the Consumer Protection Act, 2019 lays down the time limit within which a complaint for medical negligence must be filed as two years from the date of injury or harm. Section 41 provides that any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order. Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order.<sup>9</sup> Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 58, may prefer an

---

<sup>7</sup> Now replaced by the Consumer Protection Act, 2019.

<sup>8</sup> Supra note 2.

<sup>9</sup> Section 51 (1).

appeal against such order to the Supreme Court within a period of thirty days from the date of the order.<sup>10</sup> Since medical negligence disputes are a part of the Consumer disputes, it is highly recommended that Mediation will assist parties in peacefully resolving discord between the doctor and the patient. Such Mediation may be conducted under the Mediation Act 2023,<sup>11</sup> which aims to provide quality trained mediators who may be trained specifically for medical negligence cases, this may be done in collaboration with the Medical Council of India to assist parties in reaching an amicable settlement. Most importantly, the agreements resulting from such mediations will be binding and enforceable as a decree of the Court. The legal infrastructure not only supports but also incentivizes parties to a medical negligence dispute to attempt mediation for its resolution. Mandatory mediation would require parties to attempt negotiation in good faith, both in letter and spirit, ensuring their voluntary participation in at least two meetings. Mediation will be a prerequisite, and only if no settlement is reached, may a party proceed to consumer forums or the courts. This will mitigate time-consuming, costly and reputation-damaging medical negligence litigations in the country.

#### **IV. Changing trend of judicial landscape**

The Indian judiciary, especially the Supreme Court of India has evolved significant principles related to important legal issues including the tussle between the patient and medical profession. An examination of the jurisprudence developed by the Supreme Court of India while dealing with cases of medical negligence has consistently recognized the standard of fiduciary duty that medical professionals owe to their patients, i.e. a duty to exercise a reasonable degree of care, skill, and knowledge expected of a prudent medical practitioner in the same field. This ‘standard of care’ was also recognized by the Supreme Court in *Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors.*<sup>12</sup> In the instant case, after analysis of leading cases of medical negligence in our India as well as other countries especially United Kingdom, the Supreme Court has established important principles to determine and decide the medical negligence cases as under:

- 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.

---

<sup>10</sup> Section 67.

<sup>11</sup> Act 32 of 2023.

<sup>12</sup> (2010) 3 SCC 480 Para No.94.

- 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 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 is 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 unnecessary 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 pressurizing the medical professionals/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.

Again, the Supreme Court, in the case of *S. K. Jhunjhunwala v. Dhanwanti Kaur and Another*,<sup>13</sup> held that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. Later, in the case of *Dr. (Mrs.) Chanda Rani Akhouri & Ors. v. Dr. MA Methusethupathi & Ors.*,<sup>14</sup> it was observed: "[i]t clearly emerges from the exposition of law that a medical practitioner is 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 to another." The Supreme Court reaffirmed the above stated principles in the case of *M.A. Biviji v. Sunita and Others*.<sup>15</sup> The apex court concisely summarizes the concept of 'duty of care' that is owed by medical practitioners towards their patients. The Court ruled that the three essential ingredients in determining an act of medical negligence are: (1) a duty of care extended to the complainant, (2) breach of that duty of care, and (3) resulting damage, injury or harm caused to the complainant attributable to the said breach of duty. The Court also held that, however, a medical practitioner will be held liable for negligence only in circumstances when their conduct falls below the standards of a reasonably competent practitioner.<sup>16</sup>

The Supreme Court also held that due to the unique circumstances and complications that arise in different individual cases, coupled with the constant advancement in the medical field and its practices, it is natural that there shall always be different opinions, including contesting views regarding the chosen line of treatment, or the course of action to be undertaken. In such circumstances, just because a doctor opts for a particular line of treatment but does not achieve the desired result, they cannot be held liable for negligence, provided that the said course of action undertaken was recognized as sound and relevant medical practice.<sup>17</sup>

It was further ruled that to hold a medical practitioner liable for negligence, a higher threshold limit must be met. This is to ensure that these doctors are focused on deciding the best course of treatment as per their assessment rather than being concerned about possible persecution or harassment that they may be subjected to in high-risk medical situations. Therefore, to safeguard these medical practitioners and to ensure that they are able to freely discharge their

---

<sup>13</sup> (2019) 2 SCC 282.

<sup>14</sup> 2022 LiveLaw (SC) 391.

<sup>15</sup> (2024) 2 SCC 242.

<sup>16</sup> *Id* at para 37.

<sup>17</sup> *Id* at para 38.

medical duty, a higher proof of burden must be fulfilled by the complainant. The complainant should be able to prove a breach of duty and the subsequent injury being attributable to the aforesaid breach as well, in order to hold a doctor liable for medical negligence. On the other hand, doctors need to establish that they had followed reasonable standards of medical practice.<sup>18</sup>

#### **V. Standard of care expected from a medical practitioner**

In a significant ruling, the Supreme Court of India, in the case of *Yash Charitable Trust v. Union of India*,<sup>19</sup> has crystallized the jurisprudence of medical negligence in the country by observing that every medical practitioner owes to his patient a duty to exercise a reasonable degree of care, skill, and knowledge expected of a prudent medical practitioner in the same field. The ‘standard of care’ requires a medical practitioner’s conduct to be judged not by the highest expert standard, but by that of an ordinary competent practitioner, acting with due care in the circumstances prevailing at the time of treatment. The test, therefore, is one of reasonableness, not perfection. That a medical practitioner cannot be said to meet the standard of reasonable care if they administer an intervention that lacks credible scientific evidence of safety and efficacy, or where authoritative medical bodies unequivocally state that such form of treatment is not recommended.<sup>20</sup> A doctor’s conduct must conform to a “practice acceptable to the medical profession of that day” when “judged in the light of the knowledge available at the time of the incident”. The jurisprudence makes it clear that liability does not arise merely because an alternative approach existed, but rather, liability arises when the course adopted is one which the ordinary, reasonably competent medical practitioner would not regard as a sound and acceptable medical practice in light of the prevailing body of medical knowledge. A medical practitioner is insulated from negligence liability provided that “the said course of action undertaken was recognized as sound and relevant medical practice” and is supported by the knowledge available at the time of the incident. Therefore, it can be deduced that if a treatment is characterized by the relevant scientific community or regulatory authorities as unproven, experimental, obsolete, or lacking justification, such a treatment cannot be defended as an exercise of due care and reasonable judgment by a medical practitioner.<sup>21</sup>

---

<sup>18</sup> Id at para 39.

<sup>19</sup> 2026 INSC 96, decided on 30 January, 2026

<sup>20</sup> Id at para 63.

<sup>21</sup> Ibid.

## **VI. Computation of compensation amount**

The Indian judiciary including the consumer commissions have been awarding compensation amount to the claimants depending upon the nature of injury or harm suffered including hospital expenses incurred by them as a consequence of medical negligence and subsequent litigation costs. It is pertinent to mention herein a case wherein the Supreme Court has awarded a very large compensation amount for the death of a patient as a result of medical negligence by doctors in a private hospital. In the case of *Dr. Balram Prasad v. Dr. Kunal Saha & Ors.*,<sup>22</sup> the Supreme Court awarded compensation of Rs 6,08,00,550 with 6% interest per annum from the date of the complaint to the date of the payment amounting to about Rs 11 crore to the complainant. This judgment sparked debate about how medical negligence compensation should be calculated. The court opined that the “multiplier method”, commonly used in the motor accidents tribunal, was not suitable for cases of death resulting from medical negligence because the two are fundamentally different in nature. The court reasoned that using the multiplier method for medical negligence cases would result in significantly lower compensation as it relies on a notional income figure, often set at a relatively low amount, which is even lower in cases where the victim has no income. The court observed that as hospitals, nursing homes and doctors in India often earn substantial profits, using the multiplier method in medical negligence cases may not serve as a deterrent against medical negligence. Therefore, large payouts might ensure accountability and deter medical negligence, and unethical practice and it is important to provide financial support (in the form of compensation) to either the victim or the family. On the other hand, the medical professionals may argue that the care of patients is also compromised by non-availability of infrastructure, which is the responsibility of the state. Hence, the state too bears responsibility for lapses or deficiency in medical care. High rates of compensation may encourage defensive practice, affect the mental health of doctors due to the constant fear of scrutiny, lead to their bankruptcy, and force them to spend time in legal proceedings, compromising patient care. A middle path may be considered by the courts while determining the quantum of compensation which not only mitigate the loss or harm suffered by a patient but also protecting interests of the medical fraternity.

---

<sup>22</sup> (2014) 1 SCC 384.

## **VII. Recovering compensation amount from estate of deceased doctor**

Very recently in a landmark judgment in *Kumud Lall v. Suresh Chandra Roy (Dead) Through LRs and Others*,<sup>23</sup> the Supreme Court has allowed the impleading of wife and son, the legal heirs of a doctor who was drawn to court by the complainant whose wife had already lost vision of right eye due to wrong treatment and operation by the doctor, which can further affect the vision in her left eye. It is pertinent to note that it took more than 29 years to resolve a medical negligence case and the finality has not been arrived at the time of completion of this write up. The consumer complaint under the Consumer Protection Act, 1986 was filed on 13.08.1997 against Dr. Lall for alleged deficiency in service, claiming compensation about Rs. 4,50,000/- . The District Forum partly allowed the complaint holding the doctor negligent for deficiency in service and held him liable to pay compensation of Rs. 2,60,000/- to be paid within 3 months.<sup>24</sup> Being aggrieved, complainant and Dr. Lall both approached State Consumer Disputes Redressal Commission, Patna, Bihar (hereafter SCDRC) filing Appeals.<sup>25</sup> The SCDRC allowed the appeal of Dr. Lall, but the appeal filed by the complainant was dismissed and set aside the order of District Forum.<sup>26</sup> The SCDRC noted that the loss of vision of the wife of complainant was due to glaucoma and not curable even after the surgery was done desperately by Dr. Lall with intent to relieve her from pain. The SCDRC opined that the surgery performed was acceptable under the medical ethics and with the best of the abilities by Dr. Lall. It was also observed that the complainant fails to produce any report from any expert of medical board or any expert to show that in doing surgery Dr. Lall was negligent. The SCDRC held that in absence of expert evidence to substantiate the allegation of medical negligence leading to loss of vision, holding the doctor guilty for the same is not sustainable. Dissatisfied, the complainant preferred Revision Petition<sup>27</sup> before the National Consumer Disputes Redressal Commission (hereafter NCDRC) assailing the order of SCDRC, pending which, Dr. Lall passed away on 04.08.2009. The complainant filed M.A.<sup>28</sup> for substitution of legal heirs (wife and son) in the revision petition, which was allowed by NCDRC substituting the appellants herein as legal heirs.<sup>29</sup> On notice, both wife and son filed applications under Order XXII Rule 16 and

---

<sup>23</sup> 2026 INSC 443, judgment delivered on May 4, 2026.

<sup>24</sup> Vide order dated 05.11.2003, Rs. 2,00,000/- for loss of vision, Rs. 35,000/- for expenditure and treatment, and Rs. 25,000/- for mental agony.

<sup>25</sup> Nos. 598 of 2003 and 607 of 2003 respectively.

<sup>26</sup> Both the appeals were decided vide common order on 02.12.2005.

<sup>27</sup> No. 432 of 2006.

<sup>28</sup> No. 1214 of 2009.

<sup>29</sup> on 26.05.2010 (Impugned Order I).

47 read with Section 1518 of Code of Civil Procedure (hereafter CPC) and Section 229 of 1986 Act, praying to drop their names from the proceedings, to dismiss the recall by the order dated 26.05.2010. It was averred that since Dr. Lall had succeeded in the appeal before SCDRC, and died during the pendency of the revision, no subsisting decree existed on the date of his death, hence, the proceedings would stand abated. Further, the applicants were never served with any notice at any stage before joining them as party to the revision petition. In the meantime, the original complainant also died on 16.01.2014 and her legal heirs were substituted. NCDRC dismissed both the applications and posted the matter for final hearing on 20.09.2018.<sup>30</sup> Aggrieved by the said order, the present appeals have been filed wherein after issuing notice, stay on further proceeding was granted.<sup>31</sup> Having regard to the nature of the controversy and upon a careful consideration of the submissions advanced, the material placed on record, and the applicable legal framework, the question that arises for the consideration before the Supreme Court is – “Whether, upon death of the doctor during pendency of proceedings at appellate stage, the legal heirs can be impleaded and held liable for the alleged act of medical negligence of the deceased doctor? If yes, to what extent?” After a careful examination of the legal provisions and materials on record the Court concluded that upon the death of the alleged medically negligent doctor, his/her legal heirs can be impleaded and brought on record. Consequently, the extent of liability will be determined based on the pleadings and evidence presented. The Court held that as borne from records, ‘right to sue’ if any subsists qua claims against the estate on the death of the opposite party in terms of Section 306 of Indian Succession Act, 1925 read with Order XXII Rule 2 and 4 of CPC. The Court directed the NCDRC to adjudicate the negligence aspect, in order to establish the claims, if any by the deceased doctor and resultantly adjudicate the surviving claims. It was also observed that the Claimant has the duty to first establish the negligence of the deceased doctor and the claims on the estate recoverable as per Section 306 of the 1925 Act. The Court further holds that any adjudication on merits can be recoverable from the estate of the deceased doctor. Rather, the Court has to only look at claims which are maintainable as against the estate, rather than adjudicating personal claims which have elapsed with the death of the doctor.

The Supreme Court finally laid down some significant principles as stated below:

---

<sup>30</sup> Vide order dated 24.05.2018 (Impugned Order II).

<sup>31</sup> Vide order dated 18.12.2019.

- i. The common law maxim ‘actio personalis moritur cum persona’ in India has been statutorily modified by various statutory instruments such as Fatal Accidents’ Act of 1855, Legal representatives’ Suits Act of 1855, Indian Succession Act of 1925, etc.;
- ii. That the legal representative of the deceased can institute a fresh suit or be sued afresh in terms Legal Representatives Suits Act, 1855 or in terms of Section 306 of Indian Succession Act, 1925;
- iii. Continuation of suit by or against the legal representative of the deceased has to be in terms of Section 306 of Indian Succession Act, 1925 (substantive law);
- iv. Procedural prescription under Order XXII of CPC, concerning substitution of legal representative of the deceased party should be harmoniously construed with Section 306 of Indian Succession Act.
- v. The continuation of ‘right to sue’ under Order XXII Rule 2 read with Rule 4 is to be seen on the date of death.
- vi. Generally, all rights and liabilities to maintain a suit are carried to the legal representative under Section 306 of Indian Succession Act, 1925. However, when adjudicating claims under 1st exception to Section 306 of the Indian Succession Act, 1925, personal injury claims abate, while claims for or against the estate of the deceased survive.

This judgment reveals that our judiciary has been able to evolve significant principles which haven’t been dealt earlier and create new jurisprudence in the realm of medical negligence and doctor’s civil liability for deficiency in their professional services. In our view, this judgment is a landmark one in the medical negligence jurisprudence as it ruled that the legal heirs of deceased negligent doctor can be impleaded as parties for recovery of compensation from the estate of the deceased doctor.

### **VIII. Conclusion**

It is reiterated that every medical practitioner owes to his patient a duty to exercise a reasonable degree of care, skill, and knowledge expected of a prudent practitioner in the medical field. A medical practitioner cannot be said to meet the standard of reasonable care if he administers an intervention that lacks credible scientific evidence of safety and efficacy, or where authoritative medical bodies unequivocally state that such form of treatment is not recommended. This flows directly from the requisite standard of care that a doctor’s conduct must conform to a practice acceptable to the medical profession of that day when judged in the light of the knowledge available at the time of the incident. The jurisprudence makes it clear that if an intervention is characterized by the relevant scientific community or regulatory authorities, as unproven,

experimental, obsolete, or lacking justification, such an intervention cannot be defended as exercise of due care and reasonable judgment by a medical practitioner. The patients are treated in accordance with established, evidence-based medical norms, and prevents medical practitioners from resorting to speculative, unproven, or experimental interventions when there is absence of any credible scientific evidence or professional opinion. In other words, a medical practitioner who disregards this and administers speculative, unproven, or experimental treatments even when credible professional bodies have expressly advised against the use of such an intervention, may be held liable on count of professional misconduct. It is because the administration of such a treatment would fail to satisfy the standard of reasonable care necessitated under the established medical negligence jurisprudence in India. There is need for introspection by doctors individually and collectively. They must rise to the occasion and enforce discipline and high standards in the profession by assuming an active role. It must always be kept in mind that doctor's is a noble profession and the aim must be to serve humanity, otherwise this dignified profession will lose its true worth. It is true that doctors can go wrong but there is need for a balancing act on the part of judiciary which not only ensures justice to the victims' family but also to safeguard the interests of the medical professionals protecting them from unfair harassment or frivolous litigation merely because a medical outcome proved unfortunate despite reasonable care. The reference of medical negligence litigations to mediation must be strictly followed to mitigate time-consuming, costly and reputation-damaging litigations thereby promoting faster, cheaper, and more harmonious resolution of disputes while preserving the doctor-patient relationship. Finally, we must remind ourselves that a doctor may incidentally cause pain through surgery or medicine, but the pain is not the objective, healing is.