

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1405 OF 2019

1. DR. ISHITA TIKKHA

3A-1,VRINDAVAN.173,CIVIL LINES NAGPUR-440001

.....Complainant(s)

Versus

1. MANAGING DIRECTOR, APOLLO CRADLE,
NAUSHERA HOUSE & 3 ORS.

APOLLO CRADLE, NAUSHERA HOUSE,109,COURT
ROAD,LANDMARK:INSIDE HOTEL FAIRFIELD BY
MARRIOTT,AMRITSAR,PUNJAB-143001

2. DR. LATIKA UPPAL

PEDIATRICAL APOLLO CRADLE,NAUSHERA
HOUSE,COURT ROAD,AMRITSAR,PUNJAB-143001

3. DR. HARPARKASH SINGH MIGLANI

PEDIATRIC SURGEON APOLLO CRADLE,AMRITSAR

4. DR.NEERA KIRPAL

GYNECOLOGIST APOLLO CRADLE AMRITSAR

.....Opp.Party(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER

For the Complainant :

For the Opp.Party :

Dated : 20 Mar 2023

ORDER

Appeared at the time of arguments :

For the Complainant : Dr. Neelam Tikkha, AR in person

For the Opp. Parties : Ms. Suruchi Aggarwal, Sr. Advocate

with Mr. Dhruv Wahi, Advocate &

Mr. Rakshit Jain, Advocate for OP-1 to 4

Pronounced on: 20th March 2023

ORDER

“The medical professionals are entitled to get protection. 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. The malicious proceedings deserve to be discarded against the doctors[\[1\]](#).

1. This Complaint has been filed under section 21(A)(i) of the Consumer Protection Act, 1986 (for short “the Act”) by the Complainant - Dr. Ishita Tikkha (hereinafter referred to as the ‘patient’) against Apollo Cradle, Amritsar & its 3 Doctors (hereinafter referred to as the ‘OPs- 1 to 4’) for alleged medical negligence causing Complainant’s pre-term twin delivery and death of twin-1. The Complainant was represented by her mother Dr. Neelam Tikkha as an Authorised Representative (AR) / Power of Attorney.

Facts:

2. Dr. Ishita Tikkha (the patient), during her pregnancy, was under Antenatal Care (ANC) of Dr. Neera Kripal, Gynecologist (OP-4) at Apollo Cradle, Amritsar (OP-1). It was a twin pregnancy and after investigations, it was diagnosed that one baby was going to be born with esophageal atresia. Therefore, as a need for special care and to perform immediate surgery of the newborn, the Pediatric Surgeon – Dr. Harparkash Singh Miglani (OP-3) was consulted on 10.03.2019. The patient, being a doctor herself, expressed her concern about the need of continuous suction of saliva to avoid aspiration in the lungs. The OP-3 recommended the patient to opt OP-1 Hospital for delivery, since he could perform the surgery of esophageal atresia for the newborn immediately after birth. On 05.04.2019, the patient was admitted for delivery in OP-1 Hospital. It was alleged that the OP-4, without examining the patient, performed cesarean section and forced for pre-term twin delivery, by putting high risk to the newborns.

3. It was alleged that after the birth, the twins showed very healthy signs, but immediately they were shifted to NICU. It was alleged that after 2 hours, patient’s husband - Dr. Himanshu Rai noticed, from the glass window, about the blue legs of Twin-2, which needs to be comforted and kept warm. The OP-3 called him in OPD and asked not to stand near glass, since Dr. Latika Uppal was objecting. Further patient’s mother Dr. Neelam Tikkha, at around 4 pm, noticed that both babies had urinated. The diaper was so soaked that the urine was oozing out and the babies were lying in wet beds. The staff did not notice it. There was only one nurse for 4 babies, who was also very busy on her mobile.

4. It was further alleged that on 06.04.2019, Twin-1 collapsed due to choking of lungs with saliva since no suction was done at all. Twin-2 developed ‘Septicemia’. It was alleged that the Consultant - Dr. Latika Uppal (OP-2), on her routine round, at around 8am, did not inform about the critical condition of babies. The throat suction was not done. At around 9 am, the patient’s husband noticed the miserable condition of Twin-1 through glass window. It was alleged that both babies had developed aspiration pneumonia and septicemia because of unhygienic NICU, thus it was deficiency and gross negligence of the hospital. She further alleged that the OP-3 had always been on phone and not present near the bedside of the patient. He expressed that the baby had swallowed saliva. It was further alleged that X-ray was not given by the hospital but Dr. Himanshu Rai took image from his cell since babies were discharged against medical advice (DAMA).

5. Thereafter, within 24 hours, on 06.04.2019, the Complainant shifted the babies to Guru Nanak Dev Super Specialty hospital, Tarn Taran (Guru Nanak Hospital) wherein the Twin-1 died because of infection which allegedly caught at OP- Hospital. It was alleged that, as promised, the Pediatric Surgeon (OP-3) did not perform surgery to save the life of Twin-1. No efforts were made to stabilize the babies. The Twin-2 became weak due to high doses of antibiotics for the infection developed at OP-1 Hospital, though, the patient - mother of babies had no infection at the time of delivery.

6. It was further alleged that despite the hospital charging Rs. 48,000/- per baby, the critical babies were left in the hands of unqualified Dr. Amarinder, a BAMS during night of 05.04.2019. He was virtually a quack and was unable to handle NICU. The suction of saliva of Twin-1 was not done properly, which led to aspiration and choking of lungs and Apnea. The Operation Theatre (OT) was not sterile and the NICU was not upto the mark as advertised specifically for zero infection. The baby with ‘Esophageal Atresia’ died on 11.04.2019 due to thrombocytopenia, septicemia and Pneumonia. The Twin-2 was discharged from Guru Nanak Hospital after recovery on 14.04.2019. The Complainant requested the OP-1 to provide the CCTV footage of OT as well as NICU from 5th to 6th April, 2019, but the same was not provided till date by the hospital.

7. Being aggrieved due to deficiency in service and unfair trade practice on the part of Apollo Cradle (OP-1) and the treating doctors (OPs- 2 to 4), the Consumer Complaint was filed by the Complainant, seeking compensation of Rs. 5 crore for causing preterm delivery and subsequently death of Twin-1 usurping the right of life. She also prayed Rs. 50 lakh towards mental agony and Rs. 2 lakh as cost of litigation.

Submissions of Opposite Parties:

8. The OPs-1 to 4 filed their joint Written Versions and denied the allegations of medical negligence. They submitted that the Complainant has deliberately not made Guru Nanak Hospital as a party to the present Complaint since her husband was a Pediatrician, working as a Consultant there and who, himself, was involved in treatment of the child including administration of drugs. The complaint was filed with a mala fide intention with an exaggerated claim to bring the jurisdiction of this Commission.

9. The OPs submitted that the couple being themselves doctors - Dr. Ishita Tikka (Complainant) and her husband Dr. Himanshu Rai, were negligent since beginning of pregnancy. She did not perform 1st trimester scan, did not follow the instructions which *ipso facto* itself was negligence. On bare perusal of Fetal Wellbeing Scan dated 22.03.2019, chances of associated life threatening anomalies (chromosomal anomalies) were seen higher with monochorionic-diamniotic (MCDA) twins. The patient was advised Amniocentesis, but the couple refused it. On 05.04.2019, in the morning, the patient had labour pains with leakage; she was advised to come immediately to the OP Hospital. The babies were in breech presentation. At last ANC visit, the doctors avoided PV examination for the risk of sepsis. Therefore, C-section was planned and accordingly informed consent of the parents was taken. At the time of the C-Section, Dr. Himanshu Rai - the husband of the Complainant and ex-employee of the OP Hospital, entered the OT with three syringes full of unknown medicine. On 05.04.2019 the twins after the birth cried, but both babies developed respiratory distress i.e. increased rate of breathing and subcostal and intercostal retractions & grunting. Therefore, elective intubation was decided and discussed it with the husband of the Complainant, but he refused to consent.

10. The OPs further submitted that as per AIIMS Protocol of Neonatology, PV leakage for more than 24 hours is a risk factor of sepsis. Any positive infection marker within the first 72 hours of the birth indicates infection of maternal origin, known as early onset Neonatal Sepsis. Therefore, immediately after birth, septic screening was done; it showed sepsis of both the babies. Accordingly treatment with antibiotics and other supportive medicine treatment were started to the twins. The husband of the Complainant, who himself was a Pediatrician was aware of the critical condition of the babies. He was interfering during the treatment and changed the medication unilaterally without consulting the treating doctors at OP-1. He forcibly administered inj Soda Bicarb to Twin 1 without any authorization of Hospital and/or the OP 2-4 doctors. An incident report of the said incident was duly filled along with signatures of other witnesses/ parents at the NICU. In that report it was clearly stated that any adverse impact on the health of Twin-1 as a result of the unauthorized medication would solely be the responsibility of the husband of the Complainant.

11. The respiratory distress of Twin-1 got worsened and with the consent of patient's husband surfactant was administrated at 4pm. The condition of Twin-1 improved, but Dr. Himanshu continued to refuse to give consent for Elective Ventilation. Immediately upon the birth of the babies; the OP-3 had clearly explained Dr. Himanshu that for Twin-1 to treat his congenital esophageal atresia multi-stage surgery was necessary. The X-Ray report of Twin-1 also suggestive of Congenital Pneumonia and accordingly, it was repeatedly advised and suggested to him that Twin-1 had to be stabilized before the surgery, but Dr. Himanshu himself refused to give his consent for the same. The OP-3 made a note in the Consultation Referral Sheet. Dr Himanshu took off the respiratory support of Twin-2 on 06.04.2019 and started oro-gastric feeding.

12. On 06.04.2019, the Twin-1 suffered apnea, immediately OP-2 arrived at the NICU and intubated Twin-1. The parents were informed about the critical condition of Twin-1. However, instead of giving consent for further course of treatment, they informed the OP No. 2-4 that they were moving their babies to Guru Nanak Hospital, under observation of the husband of the Complainant Dr. Himanshu who was a pediatric consultant there.

13. The OP No. 2-4 advised the Complainant and her husband that mere 24 hours of stay at the OP Hospital was not sufficient for stabilizing Twin- 1. They were also explained about the poor prognosis and

the likely outcome. Same was duly recorded in the DAMA as the consequences of DAMA would be the sole responsibility of the newborn's parents. After shifting of the babies to Guru Nanak Hospital, the (mother) Complainant herself stayed for one day in the OP Hospital.

14. The OPs submitted that the Complainant concealed that Twin-1 was subsequently operated there on 11.04.2019 and died shortly after the procedure. As the babies were stayed in Guru Nanak Hospital for 5 days, but no single medical record was produced before this commission. The complaint was filed without any expert opinion as held in **Martin F. D'Souza vs Mohd. Ishfaq**[2] case. The OPs relied upon the guidelines laid down by the Hon'ble Supreme Court in the case of **Kusum Sharma vs Batra Hospital**[3].

Arguments:

15. I have heard the arguments from the AR of the Complainant and the learned Counsel for OPs. Perused the material on record, *inter alia*, the Medical Record and gave our thoughtful consideration.

16. The Authorised Representative (AR) for Complainant agued the matter on following points:

a) Septic conditions in NICU of Apollo cradle, NICU and Operation theatre not hygienic and germ free as advertised. Negligent consultants and staff. One nurse for many babies. She was also busy with mobile instead of being attentive. Medical officer incompetent.

b) Consultant gynaecologist Neera Kirpal followed unfair practice. She performed caesarian delivery without examination of the mother forcing preterm babies to be born and putting them to High risk. Because of that Baby 1 died and Baby 2 has to go through series of diagnostic tests like Retinopathy tests and suffer physical torture and mental torture for both babies and parents for life long .

c) NICU charges also were saddled so that Apollo Hospital and consultants make more profit.

d) Consultant Pediatrician Dr. Latika Uppal did not recommend for immediate surgery for oesophageal atresia but admitted in NICU. She did not get suction of saliva done properly because of which Baby 1 developed pneumonia because of aspiration of saliva in to lungs.

e) She did not give proper treatment and instead of taking care left the Baby 1 and and Baby 2 in critical condition to attend personal social function without informing the serious condition of Baby 1 and Baby 2 who had fallen sick because of Septic condition in NICU, to me or my husband who were in the hospital at that time.

f) Followed unfair Trade practice to increase the bill and consultation charges admitted babies in NICU so that Apollo Hospital and consultants make more profit.

g) Consultant Pediatric Surgeon, Dr. Harprakash Singh Miglani, did not perform operation for oesophageal atresia, though he knew even before the birth that the baby will not be stable if the surgery is not performed.

h) Misguiding parents that child will be stable and he would perform the surgery though child needed immediate surgery. Followed unfair trade practice to increase the bill and consultation charges admitted babies in NICU so that Apollo Hospital and consultants make more profit.

i) That, Complainant being aggrieved by the aforesaid act of the opposite Party by not giving appropriate care knowingly causing the death of the baby 1 and causing critical condition of baby 2 .

j) That, the opposite Party has committed gross deficiency of service and

k) Carried out unfair trade practice by not providing zero infection NICU as advertised by Apollo Speciality Hospitals attentive and responsible staff and team of qualified doctors who later refused service.

17. The Complainant submitted that OP-2 Dr. Latika Uppal left critical babies in the ICU in care of inefficient fresh junior Dr. Sumit Patel having no experience and he was unable to tackle situation.He was

asking for instruction over the phone to Dr. Latika Uppal. He was lost and in confusion, which amounts to medical negligence and principle of *res ipsa loquitur*.

18. The learned Counsel for the OPs reiterated their evidence and filed the medical references and few citations.

Reasons & Conclusion:

19. From the record, it is evident that, the twins were admitted in the Guru Nanak Hospital under care of Dr. Himanshu Rai after the DAMA discharge from the OP-1 Hospital. Therefore, during the proceedings, the Guru Nanak Hospital and its Pediatrician Dr. Himanshu Rai were impleaded as necessary Parties as OPs- 5 & 6 respectively.

20. Perused the evidence filed by way of affidavits by OP-3 and OP-4. They have submitted that the Complainant and her husband both had worked in OP Hospital as Senior Residents and were well aware of the facilities and expertise available. The OP-3 informed immediately after the birth that the twin-1 was not stable and the condition did not permit immediate surgical intervention and the baby was not even fit for anesthesia. The X-ray revealed esophageal atresia which would require multiple surgeries over a period of 2 years. He further submitted that on bare perusal of the referral sheet dated 05.04.2019, the twin-1 was born with other associated cardiac defects and anatomical malformations also suspected. It was duly informed to the husband of the Complainant. However, they rather giving consent for treatment, the husband of the Complainant and other relatives started finding fault with the Hospital and the staff. Regarding the allegation that the husband of the Complainant who observed, through window, that twin-2 had blue legs, the OP-3 submitted that Acrocyanosis is common after the birth, which needs no treatment. It is also pertinent to note that if there was absence of continuous suctioning, twin-1 would have succumbed within few minutes of birth. As both the babies showed signs of early onset neonatal sepsis like severe breathing difficulty, soon after birth, increased respiratory rate, grunting and subcostal, intercostal retractions. It is pertinent to note that as the babies were pre-mature, low birth rate, therefore, immediately shifted to NICU and placed in radiant warmer. From the laboratory report, the twin-1 and twin-2 were CRP positive with low neutrophil. These are the signs of early neonatal sepsis.

21. I have gone through the standard text books 'William's Obstetrics' (21st Ed.) and Pediatric Surgery by Benson. In my view, the allegations of the Complainant are not totally sustainable for the reasons as stated below:

- i. The Complainant alleged that the OP-3 Dr. Neera Kripal, without examining the Complainant had performed Cesarean Section Delivery forcing the twins to be born preterm and putting them to high risk. In my view, it was a bald allegation. The act of OP-3 was not intentional; her decision was based upon the clinical and USG findings. She avoided PV examination to lower the risk of infection and performed the C-section with informed consent. Thus, the allegation is not sustainable.
- ii. It is an admitted fact that after delivery the newborn babies were in the Apollo Cradle (OP-1) for less than 24 hours, which got discharged DAMA. Thereafter admitted in Guru Nanak Hospital. The Twin 1 was operated there for congenital anomaly which subsequently led to death. This fact was concealed by the complainant.
- iii. It is clear from the **AIIMS Protocol of Neonatology** that the Early Onset Neonatal Sepsis occurs due to infection of maternal origin, therefore infection marker test become positive within the first 72 hours of the birth. Thus in my view, the infection suffered by Twins was not an acquired hospital infection, but it was from the womb/maternal side.
- iv. It is evident from the record that the father of twins was a pediatrician and he was interfering in ongoing treatment of the twins at OP-1 hospital. He did not give consent to Dr. Miglani for intubation / ventilation.
- v. The allegation of the complainant that Dr. Latika was not personally present all the time for 24 hours, during the treatment. In my view, it was absurd allegation. It should be borne in mind that no doctor was expected to stay with the patient for 24 hours, but the patient remains under observation round o'clock in the ward / NICU. It is evident from Doctor's Duty progress report that she was available at all required times and took proper care and treatment of the twins.
- vi. Dr.Himanshu –(the husband of Complainant & father of twins) administered inj Soda Bi-carb to twin 1 without any permission/authorization of hospital(OP-1) or the treating doctors (OP 2-4). It amounts

to interference and gross medical negligence on his part.

- vii. On bare perusal of Audio Transcript of Counseling Session it was admitted by the Complainant and her mother that they were getting twins discharged (DAMA) at the working place of Dr. Himanshu i.e. Guru Nanak Hospital at Taran Taran.
- viii. It is pertinent to note that Dr. Amarinder was working as a Asst. Physician at the OP-Hospital and working under supervision of Dr. Latika (OP-2). The other senior residents – Dr. Sunil (MBBS DCH) and Dr. Akansha (MBBS DNB Paed.) were on alternative duties. Moreover, Dr. Amarinder did not take any independent decision with respect to treatment of twins.
- ix. On careful perusal, the treating doctors at OP Hospital have performed the duty with due care and there was no deficiency in service or unfair trade practice. The Complaint appears to be filed after thought and the Complainant was trying to levy false and misconceived allegations against them. The claim is also exaggerated, so as to bring the Complaint under the jurisdiction of National Commission. I don't see that the Complainant has explained or justified the basis for claiming such huge amount.

22. According to the AIIMS **Neonatal Protocol**, the Neonatal sepsis can be classified into two categories depending on the onset of symptoms. The relevant extract on Neonatal Sepsis is reproduced below:

CLASSIFICATION OF NEONATAL SEPSIS

- **Early onset sepsis (EOS):** it presents within the first 72 hours of life. In severe cases the neonate may be symptomatic at birth. Infants with EOS usually present with respiratory distress and pneumonia. The source of infection is generally the maternal genital tract.

The following risk factors seem to be associated with an increased risk of early onset sepsis:

1. Low birth weight (<2500 grams) or prematurity
 2. Febrile illness in the 1110/her with evidence of bacterial infection within 2 weeks prior to delivery
 3. Foul smelling liquor
 4. Rupture of membranes > 24 hours
5. Single unclean or > 3 sterile vaginal examination(s) during labor
6. Prolonged labor (sum of 1st and 2nd stage of labor> 24 hrs)
7. Perinatal asphyxia (Apgar score <4 at 1 minute)

- **Late onset sepsis (LOS):** It usually presents after 72 hours of age. The infection in LOS is either hospital acquired community acquired. Neonates usually present with septicemia, pneumonia or meningitis. The risk factors of nosocomial sepsis include low birth weight, prematurity, admission in intensive care unit, mechanical ventilation, invasive procedures, central lines, administration of parenteral fluid~ and use of stock solutions.

Factors that increase the risk of community-acquired LOS include hygiene, poor cord care. Bottle-feeding and pre-lactal feeds. In contrast, breastfeeding helps in prevention of infection.

23. On careful perusal of entire medical record, I note that the patient was admitted on 05.04.2019 at 36+ weeks twin pregnancy. Both were in breech presentation with signs of Oligohydramnios with IUGR. The examination findings were PV leaking and the patient was aware of C-sections as already decided. The case sheet revealed the heading as 'tampering of treatment' [Annexure R3] in hand written mentioned that at 1.09 pm on 06.04.2019. It was signed by Dr. Latika and Dr. Himanshu Rai, the father of twins. The hand written text is reproduced as below:

6/4/19, 1:09 PM Tampering of treatment

It has been noted that Inj. Sodium bicarbonate was administered by Dr. Himanshu (father) without discussing with Dr. Latika. Also ionotropic constitution was changed by Dr. Himanshu.

For the above, discussion was not done with Dr. Latika (treating consultant). Anything that happens to babies is Dr. Himanshu's responsibility. Consequences etc.

Signature of Dr. Latika

Signature of Dr. Himanshu Rai (Father)

24. Similarly, the statement of witness is on record, who has seen Dr. Himanshu Rai while tampering done on 5th & 6th April. It is reproduced as below:

on 06.04.2019 at 8.30 am

It is to certify that Dr. Himanshu Rai has been consistently entering the NICU without any authority or permission. He is also misbehaving with on-duty staff and also with Dr. Latika. He has been giving injection to both babies himself (B/o Ishita Tw 1 & Tw 2) without Dr. Latika Uppal's permission.

25. It is evident that Dr. Miglani examined the twins and noted the findings as weight 1.5 kg, X-ray showed no gas in abdomen. Both the lungs appear hyper inflated with some patches in right mid and lower zone and left mid zone. He suspected the diagnosis of pulmonary esophageal atresia with RDS. Advised deep throat suction every 5 to 10 minutes and wrote a plan of treatment and same was explained Dr. Himanshu about esophagostomy or gastrostomy. Further echocardiography of the babies was advised. The babies' blood investigations showed C-reactive protein (CRP) value high (7.1 mg%), it was suggestive of infection. The doctors at OP-1 performed aerobic culture and sensitivity of the blood for both the twins and it was reported that no pyogenic organisms. The pro-calcitonin levels were within normal limits. After DAMA, at the time of admission to Guru Nanak Hospital the CRP values of both babies were high.

26. On 06.04.2019, at 11.30am, discharge was taken (DAMA) with following undertaking:

“Attendants have been explained in detail about prognosis and outcome. Tampering of treatment by father has also been pointed out. Treatment tampered in presence of Dr. Latika, Dr. Sunil, sister Neelam and Sunita. Attendants want the baby to discharge against medical advice (DAMA). Poor prognosis explained.”

It was signed by Dr. Latika and both the sisters.

27. I have perused the affidavit of evidence filed by Dr. Himanshu Rai. He submitted that he was forced to sign blank pages, as the hospital authorities were not discharging his babies; therefore, he was compelled to sign the pages. He wanted immediate discharge for treatment of both babies in other hospital as the conditions of the babies were deteriorating fast. He was displeased with the negligent treatment and unhygienic NICU at the OP-1. He denied the interference in treatment and tampering of record. It was false submission of Dr. Himanshu. It is unfortunate and sad to note that he himself was a Pediatrician and had also previously worked in the OP-1 hospital. He was well acquainted about the facilities, mode of treatment in OP-1. Being a Pediatrician, he had sufficient knowledge about the twin delivery, wherein the newborns show low birth weight. Such babies with low birth weight had higher rate of mortality (30%) during correction of esophageal atresia. In the article – **“Outcome of Patients With Esophageal Atresia and Very Low Birth Weight ($\leq 1,500$ g)[4]”** Primary repair of esophageal atresia (EA) in infants with very low birth weight (VLBW) and extremely low birth weight (ELBW) has been widely performed in pediatric surgery. However, several studies have shown that complication rates in infants with VLBW are high. Preterm babies with VLBW present with cardio-pulmonary vulnerability, an immature immune system, and the risk of preterm complications such as necrotizing enterocolitis and intracranial hemorrhage (ICH).

In the instant case, admittedly, the Twin-1 was premature, having weight about 1.5 kg, has poor prognosis. Thus, the Pediatrician i.e. father of Twins cannot plead his ignorance on the subject.

28. I have perused one affidavit filed by Dr. Mukesh Kumar in support of the Complainant. It was filed just to show that the OP hospital and the Neonatologist - Latika were carelessness during the treatment of his wife Dr. Garima Kumari. In my view, it was futile attempt of the Complainant, which has no relevance to the instant case. It has no evidential importance.

29. Recently, the Hon'ble Supreme Court in the case of **Chanda Rani Akhouri vs M.S.Methusethupathi Mithupathi**[\[5\]](#) held as below:

23. In the case of medical negligence, this Court in *Jacob Mathew v. State of Punjab and Another*¹ dealt with the law of medical negligence in respect of professionals professing some special skills. Thus, any individual approaching such a skilled person would have a reasonable expectation under the duty of care and caution but there could be no assurance of the result. No doctor would assure a full recovery in every case. At the relevant time, only assurance given by implication is that he possessed the requisite skills in the branch of the profession and while undertaking the performance of his task, he would exercise his skills to the best of his ability and with reasonable competence. Thus, the liability would only come if (a) either a person (doctor) did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill which he did possess. It was held to be necessary for every professional to possess the 1 (2005) 6 SCC 1 20 highest level of expertise in that branch in which he practices. It was held that simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of the medical professional.

26. In a recent judgment in **Dr. Harish Kumar Khurana v. Joginder Singh and Others**³, this Court held that the hospital and doctors are required to exercise sufficient care in treating the patients in all circumstances. However, in an unfortunate case death may occur. It will be necessary that sufficient material on medical evidence should be available before the adjudicating authority to arrive at a conclusion that the death is due to medical negligence. Even death of a patient cannot, on the face of it, be considered to be medical negligence.

27. It 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. In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

30. To conclude, the undisputed facts in the instant case that the treating doctors (OP-2-4) were qualified with experience in their field and possessed requisite knowledge and skill in their subject. In my view, the facts of the case at hand to be examined in light of principle of law with a view to find out as to whether the treating doctors could be held negligent during treatment of the patient and her new born twins during the short stay (24 hours) at OP-1 hospital. Unfortunately the instant complaint was filed by the Complainant who herself was a Gynecologist with the support of her husband, who was a Pediatrician himself. Both had worked in the OP-1 hospital and knew about the functioning and facilities at OP-1 hospital. They had sufficient knowledge on the progress of twin pregnancy, the aspects of delivery and the Congenital Esophageal atresia of the newborn and its treatment modalities. There was glaring evidence that the Complainant's husband Dr. Himanshu was interfering in the NICU with the treatment of the newborns. The patient and the newborns were stayed for 24 hours in OP-1 and by any stretch of imagination, emergent surgery was not possible unless the Twin-1 was stabilized. They made vague, misconceived allegations and unsuccessful attempts to build a case of alleged medical negligence against the OPs. In catena of decisions, it has been held that it is for the Complainant to prove the negligence or deficiency in service by adducing cogent evidence. Mere allegation of negligence will be of no help to the Complainant.

31. Based on the discussion above and respectfully following the precedent of Hon'ble Apex Court, I do not find any merit. No medical negligence is attributed against the treating doctors and the hospital.

The Complaint is dismissed. There shall be no Order as to costs.

[1] 2010(2) SCC 480

[2] (2009) 3 SCC 1

[3] 2010(2) SCC480

[4] Front Pediatr. 2020 Nov 17;8:587285

[5] (2021) 10 SCC 291

.....
DR. S.M. KANTIKAR
PRESIDING MEMBER