



LAW OF MEDICAL NEGLIGENCE AND COMPENSATION (1996). By R.K. Bag.  
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AFTER THE commencement of the Consumer Protection Act 1986, medical negligence has been receiving greater attention, as more and more claims for compensation are being filed in the forums under the Act. Before the 1986 Act, an aggrieved patient had two remedies for medical negligence, namely, a civil suit for damages under the law of torts and in a few cases criminal prosecution for offences under the Indian Penal Code. However, the victims were reluctant to pursue these remedies in most cases in India. In contrast, in the USA actions for medical negligence are very common. In *White House v. Jordan*<sup>1</sup> Lord Denning, M.R. observed:

Take heed of what has happened in the United States. 'Medical malpractice' cases there are very worrying, especially as they are tried by juries who have sympathy for the patient and none for the doctor, who is insured. The damages are colossal. The doctors insure but the premiums become very high: and these have to be passed on in fees to the patients. Experienced practitioners are known to have refused to treat patients for fear of being accused of negligence. Young men are even deterred from entering the profession because of the risks involved. In the interests of all, we must avoid such consequences in England. Not only must we avoid excessive damages. We must say, and say firmly, that, in a professional man, an error of judgment is not negligent.<sup>2</sup>

Even now, due to poverty and lack of awareness of rights many people from rural India cannot avail of the remedy under the Consumer Protection Act 1986.

Negligence implies absence of intention to cause harm to the patient. It is conduct, not a state of mind. The law imposes on all persons the duty to exercise the care, skill and foresight of a reasonable man. In *Halsbury's Laws of England* the law is stated in simple terms. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Whether or not he is a registered medical practitioner, such a person who is consulted by a patient owes him certain duties, namely, (i) a duty of care in deciding whether to undertake the case; (ii) a duty of care in deciding what treatment to give; (iii) a duty of care in his administration of that treatment; and (iv) a duty of care in answering a question put to him by a patient in circumstances in which he knows that the patient intends to rely on his answer. A breach of any of these duties will support an action for negligence by the patient. A person is not liable for negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular

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1. (1980) 1 All ER 650.

2. *Id.* at 658.



art, even though a body of adverse opinion also existed among medical men. Negligence as a cause of action which renders the medical practitioner liable for damages is not the same thing as negligence which amounts to professional misconduct.

In India, the judgment of the Supreme Court in *Indian Medical Association v. V.P. Shantha*,<sup>3</sup> is a landmark on the subject. It has finally settled the controversy regarding the applicability of the Consumer Protection Act 1986 to cases of medical negligence. Now patients can claim compensation for medical negligence or deficient professional services from doctors who treated them. The remedy is relatively quick and inexpensive as compared to a suit for damages in the ordinary civil courts.

The author of the book, R.K. Bag, has concentrated his attention on the rights and liabilities under the Consumer Protection Act 1986. The book is divided into three parts. Part A deals with negligence — the meaning and concept of negligence, duty to take care, nature of professional duty, consent to treatment, limitations of action, common complaints — rights and obligations categorywise, such as surgery, medicine, gynaecology and obstetrics, paediatrics, anaesthesia and dental surgery. Part B deals with compensation under three heads, viz., eligibility and liability, pleading and proof and amount and assessment. Part C contains useful appendices. Code of Medical Ethics framed under the Indian Medical Council Act 1956, the Consumer Protection Act 1986, the Fatal Accidents Act 1855, the Indian Majority Act 1875, the Indian Medical Council Act 1956, the Legal Representatives' Suits Act 1855, the Medical Termination of Pregnancy Act 1971, extracts of the mental Health Act 1987,<sup>4</sup> the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 and the Transplantation of Human Organs Act 1994 are set out in Part C.

In the first two parts of the book, the author has neatly summarised the entire law of medical negligence and compensation in England and India with significant clarity. The in-depth analysis of the principles of medical negligence under general, penal and consumer law is an important characteristic of the book and makes it useful to the members of the legal and medical professions. It is equally useful to students of law and medicine and the laymen including patients. The book is a valuable addition to the literature on the subject of medical negligence and compensation. The printing and get up of the book are good. The book is eminently readable and informative.

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3. (1995) 6 SCC 651.

4. Ss. 15-36.

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