Medical negligence in common law

Parts of the World, Asia

Negligence was added to common law in the 17th century by the increasing number of horse and buggy roads collisions. The beginning of the 17th century was marked by a slow but steady transformation from an unlawful action of trespass to a case of negligence. The term negligence in its current form is not of Indian origin, but is inspired by English law, where negligence is a separate offense. It is therefore important to know the English position in relation to the same thing. This was initially considered a mistake and not a deliberate violation of a legal obligation. A careless act can lead to any action only if there are due diligence obligations and if the non-observance has caused damage and then the carelessness will amount to negligent act under the law of negligence. Every job requires specialized skills and learning. Persons involved in the exercise of the required competence could be held liable in the event of negligence if they had not taken such special precautions.

In English law, the rule is “ imperitia culpa annumerature” (the lack of competence is considered a defect). In R. Bateman, the responsibility of the doctor and his duties were discussed. The court said that if a doctor claims to be a qualified practitioner, he or she is required to practice the due diligence, care, caution, knowledge and skills required in the treatment. The law requires a reasonable amount of competency, regardless of whether he is qualified or unqualified by a lower standard. He does not have to be committed to treat if the practitioner thinks that it surpasses his abilities. It does not matter whether he provides the service gratuitously or as a reward. The standard of care and ability must be fair and appropriate. It should not be unusually high or very low. Taking into account the healthcare standard

to be observed by the physician, other relevant factors must also be taken into account, such as work status, specialization, level of medical knowledge, development, availability of facilities, location, etc. by the English legal system.

Indian Courts often base their judgements on English decisions. Judge Tendolkar observed in 1947 that acts of negligence in India must be determined according to the principles of English common law. This verdict was upheld by the Bombay High Court on appeal by Chagla C. J. and Judge Bhagawati they found that the law was not in dispute in this area. The plaintiff must first establish that the defendant lacked diligence and skill to such an extent that he was able to establish the necessary link between the defendant's negligence and the final death of the plaintiff's son.

These observations make it clear that negligence must be the immediate cause of the damage suffered by the plaintiff. It should be noted that very few victims have complained about the negligence of doctors and that, even if they are seeking compensation, the case is being heard by a subordinate or district court and is rarely appealed to the higher courts. The number of cases judged by higher courts is negligible and this too without setting a new principle or a new liability theory in the law of torts. The highest court in the country has upheld the law laid down in the book Laws of England by Halsbury.

A person who is willing to give medical advice or treatment is implicitly required to have the skills and knowledge to do so. Whether a practitioner is a registered doctor or not, when consulted by a patient, he owes that patient

certain obligations that being due diligence while providing the treatment. Violation of any of these obligations will support a claim for negligence on the part of the patient. This principle was also endorsed by the Hon'ble Supreme Court in Philips India Ltd v. Kunju Punnu and another. The view of the Madhya Pradesh District Court is similar in J. N. Shrivastava vs. Rambiharilal and others. From the above decisions it would appears that our courts have relied heavily on English decisions.

The main causes of negligence in the medical profession are thus:

1. The existence of an obligation to care no matter if it depends or not on the issue of proximity.
2. Breach of duty to take reasonable care.
3. The prejudice or the loss to the defendant caused because of the breach of duty.