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fact of damage to pancreas came to the notice of the deceased, he asked for the details which were not given. The appellants alleged that the tumor taken out from the body was not malignant.

17. The complaint of the appellants was thoroughly examined and dealt with by the National Commission. The National Commission had decided the entire case of the appellants in the light of the law which has been crystallized by a number of cases decided by this Court. Some of them have been extensively dealt with by the Commission.

18. The allegations in the complaint were strongly rebutted by Dr. Kapil Kumar, respondent no. 3. Dr. Kapil stated in his affidavit that the anterior approach was preferred over the posterior approach in the suspected case of cancer, which was the case of Shri Sharma. The former approach enables the surgeon to look at liver, the aortae area, the general spread and the opposite adrenal gland. The risk involved was explained to the patient and the appellants and they had agreed to the surgery after due consultation with the family doctor.

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1385 OF 2001

Kusum Sharma & Others .. Appellants

Versus

Batra Hospital & Medical Research Centre
& Others .. Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. This appeal is directed against the judgment and order dated 30th August, 2000 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short, 'National Commission') in Original Petition No.116 of 1991.
2. The appellants filed a complaint under section 21 of the Consumer Protection Act, 1986 claiming compensation of Rs.45 lakhs attributing deficiency in services and medical negligence in the treatment of the deceased Shri R.K. Sharma (who was the husband of appellant no.1, Kusum Sharma and the father of appellant nos. 2 and 3).

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.

76. A mere deviation from normal professional practice is not necessarily evidence of negligence.

77. In **Jacob Mathew's case** (supra) this court observed that higher the acuteness in emergency and higher the complication, more are the chances of error of judgment. The court further observed as under:-

“25.....At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. 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. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice

3. Brief facts which are necessary to dispose of this appeal are as under:-

4. Late Shri R.K. Sharma was a Senior Operations Manager in the Indian Oil Corporation (Marketing Division). In June 1989, he developed blood pressure. He was very obese. He complained of swelling and breathlessness while climbing stairs. He visited Mool Chand Hospital on 10.12.1989 but no diagnosis could be made. The Indian Oil Corporation referred him to Batra Hospital on 14.3.1990 where he was examined by Dr. R.K. Mani, respondent no.2 and Dr. S. Arora who advised him to get admitted for Anarsarca (Swelling).

5. On 18.3.1990, Shri Sharma was admitted in Batra Hospital. On 20.3.1990, an ultrasound of abdomen was done and the next day, i.e., on 21.3.1990, a C.T. scan of abdomen was done and it was found that there was a smooth surface mass in the left adrenal measuring 4.5 x 5 cm and that the right adrenal was normal. Surgery became imperative for removing the left adrenal. The deceased, Shri Sharma and appellant no.1 were informed by Dr. Mani, respondent no.2 that it was well encapsulated benign tumor of the left adrenal

abdomen. The C.T. abdomen revealed a large left adrenal mass. Accordingly, the following note was recorded by Dr.

R.K. Mani in the case sheet on 21.3.1990:-

"CT abdomen reveals a large left adrenal mass. Evidently there is a secreting adrenal tumour. Patient needs full work up re hormonal status and CT Head Scan." The same day Dr. R.K. Mani referred the case to Dr. C.M. Batra, Endocrinologist and sought Dr. Batra's opinion on the diagnosis made by him that Anasarca was attributable to the Adrenal tumour. Dr. Mani also referred Shri R.K. Sharma to a Dermatologist. That after reviewing the case Dr. C.M. Batra agreed with Dr. Mani that Anasarca was due to the Adrenal Tumour. Dr. Batra was also of the opinion that the Adrenal Tumour could be due to either Adrenal or Adrenal Carcinoma (i.e. cancer). Dr. Batra recommended a C.T. Thorax Bone and Skeletal survey.

The Dermatologist Dr. Kandhari reported that Shri R.K. Sharma had a fungal infection. After the reports of all the tests and the report of the hormonal assays had been received, respondent no.2 came to a confirmed diagnosis that Shri R.K. Sharma had a secreting adrenal tumour. The patient was informed that surgery for removal of an adrenal tumour was planned. Appellant no.1 was also informed that the tumour was suspected to be malignant. Mrs. Kusum Sharma told respondent no.2 that one of her relations was a doctor working in Jodhpur Medical College and that she would like to consult him. The said relation of Smt. Kusum Sharma came down to Delhi, examined Shri R.K. Sharma and went through all the reports. Thereafter, Smt. Kusum Sharma gave consent for the surgery. Dr. Kapil Kumar, who specializes in surgical oncology, i.e., cancer surgery was asked to operate upon Shri R.K. Sharma. The risk involved in the operation was explained to the petitioner, her

of less than 5 cm in size which could be taken out by an operation. It was decided to carry out the surgical operation for the removal of abdominal tumor. On 2.4.1990, the doctor obtained consent from the appellants for the operation of removal of abdominal tumor. On test, the tumor was found to be malignant. The treatment for malignancy by way of administering Mitotane could not be given as it was known to have side effects.

6. The surgery was carried out on 2.4.1990 by Dr. Kapil Kumar, respondent no.3. During the surgery, the body of the pancreas was damaged which was treated and a drain was fixed to drain out the fluids. According to the appellants, considerable pain, inconvenience and anxiety were caused to the deceased and the appellants as the flow of fluids did not stop. After another expert consultation with Dr. T.K. Bose, respondent no.4 a second surgery was carried out on 23.5.1990 in Batra Hospital by Dr. Bose assisted by Dr. Kapil Kumar.

7. Shri Sharma was fitted with two bags to drain out the fluids and in due course, wounds were supposed to heal inside

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.

and the fluid was to stop. The deceased was discharged on 23.6.1990 carrying two bags on his body, with an advice to follow up and for change of the dressing. The deceased next visited Batra Hospital only on 31.8.1990 and that too to obtain a Medical Certificate from Dr. Mani, respondent no.2.

8. On 9.10.1990, Shri Sharma vomited at home and arrangements for shifting him to the Batra Hospital were made and the Hospital's ambulance sent by Dr. Mani. Shri Sharma died in the hospital on 11.10.1990 on account of 'pyogenic meningitis'.

9. It is pertinent to mention that after the discharge from Batra Hospital on 23.6.1990, the deceased wrote a letter on 26.6.1990 to his employer narrating the agony and the pain he underwent at the hands of the doctors in Batra Hospital.

10. The deceased, on the suggestion of Dr. Bose, respondent no.4 visited Modi Hospital on 10.7.1990 where Dr. Bose was a Consulting Surgeon for change of dressing after 17 days.

Respondent nos. 2 and 3, namely, Dr. Mani and Dr. Kapil Kumar visited the residence of the deceased on 14.7.1990 and found him in a bad condition and asked him to go to AIIMS

55. This court in the case of *State of Haryana v. Smt. Santra* (2000) 5 SCC 182 in the matter of negligence relied upon the case of *Bolam v. Friern Hospital Management Committee* (*supra*) and on *Whitehouse v. Jordan & Another* (*supra*).

56. In *Poonam Verma v. Ashwin Patel & Ors.* (1996) 4 SCC 332 where the question of medical negligence was considered in the context of treatment of a patient, it was observed as under:-

“40. Negligence has many manifestations – it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, wilful or reckless negligence or Negligence per se.”

57. In the instant case, Dr. Kapil Kumar, respondent no.3 who performed the operation had reasonable degree of skill and knowledge. According to the findings of the National Commission, he cannot be held guilty of negligence by any stretch of imagination.

58. Negligence *per-se* is defined in Black's Law Dictionary as under:-

where he was admitted on 22.7.1990 and treatment was given for pancreatic fistula and chronic fistula. He was discharged on 26.7.1990 with an advice to follow up in the O.P.D. The deceased again went to Mool Chand Hospital on 17.8.1990 with pancreatic and feecal fistula which was dressed. The deceased was discharged from Mool Chand Hospital on 31.8.1990. The deceased went to Jodhpur on 29.9.1990 and on 30.9.1990 he had to be admitted in the Mahatma Gandhi Hospital at Jodhpur where he was diagnosed with having post-operative complications of Adrenoloctomy and Glutteal abscess. The deceased was discharged from there on 3.10.1990 with an advice to get further treatment at AIIMS and when the deceased again went to AIIMS on 8.10.1990, Dr. Kuchupillai, a senior doctor at AIIMS wrote on a slip 'to be discussed in the Endo-Surgical Conference on 8.10.1990'.

11. The appellants after the death of Shri Sharma filed a complaint under section 21 of the Consumer Protection Act, 1986 before the National Commission claiming compensation attributing deficiency in services and medical negligence in the treatment of the deceased Shri Sharma.

also refused to agree with the thought that merely because too strong a mixture was dispensed once and a number of persons were made gravely ill, a criminal degree of negligence was proved.

84. This court in *Kurban Hussein Mohammedali Rangawalla v. State of Maharashtra* (1965) 2 SCR 622, while dealing with Section [304A](#) of IPC, the following statement of law by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap* (1902) 4 Bom LR 679, was cited with approval:-

"To impose criminal liability under Section [304A](#), Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*."

85. In *Dr. Laxman Balkrishna Joshi* (supra), the court observed that the practitioner must bring to his task 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

12. The appellants attributed death of Shri Sharma because of negligence of the doctors and the hospital. The appellants alleged that the informed consent was completely lacking in this case. The appellants also alleged that the only tests done before operation to establish the nature of tumor were ultrasound and C.T. scan which clearly showed a well capsulated tumor of the size 4.5 x 5 cm. in the left adrenal and the right adrenal was normal.

13. The appellants alleged that the deceased Shri Sharma had no access whatsoever to any of the hospitals records before filing the complaint.

14. The appellants also alleged that there was nothing on record to conclusively establish malignancy of the tumor before the operation was undertaken. The appellants also had the grievance that they were not told about the possible complications of the operation. They were told that it was a small and specific surgery, whereas, the operation lasted for six hours. The appellants alleged that pancreatic abscess was evident as a result of pancreatic injury during surgery. The appellants further alleged that there was nothing on record to

19. With the help of medical texts in support of adopting 'anterior' approach, respondent no. 3 mentioned as under:

"(i) "The 'anterior' approach for adrenalectomy is mandatory whenever optimum exposure is required or when exploration of the entire abdomen is necessary. Therefore, this approach is used in patients with adrenal tumours >4 cm in diameter, or in patients with possibly malignant tumours of any size, such as pheochromocytoma or adrenocortical carcinoma...."

Resection of the left adrenal gland requires mobilization of the spleen and left colon. The lateral peritoneal attachments of the left colon are freed, initially. Then the spleen is scooped out from the left upper quadrant medially and the avascular attachments between the spleen and diaphragm are divided. The spleen, stomach, pancreatic tail and left colon are retracted medially en bloc to the superior mesenteric vessels. The left adrenal gland is exposed splendidly in this manner". - Peritoneum, Retroperitoneum and Mesentery - Section IV.

(ii) "Adrenal operations. Surgery should be initial treatment for all patients with Cushing syndrome secondary to adrenal adenoma or carcinoma. Preoperative radiologic lateralization of the tumor allows resection via a unilateral flank incision. Adrenalectomy is curative. Postoperative steroid replacement therapy is necessary until the suppressed gland recovers (3-6 months).

Adrenal carcinoma should be approached via a midline incision to allow radical resection, since surgery is only hope for cure". - Principles of Surgery, 18th Edition Page 560.

show that Dr. Kapil Kumar, respondent no. 3 possessed any kind of experience and skill required to undertake such a complicated operation.

15. The appellants also had the grievance that they were not informed in time of the damage caused to the body of pancreas and the removal of the spleen.

16. According to the appellants, the 'anterior' approach adopted at the time of first surgery was not the correct approach. Surgery should have been done by adopting 'posterior' approach for removal of left adrenal tumor. Dr. Kapil Kumar, respondent no. 3 after the first operation on 2.4.1990 told the appellants that the operation was successful and the tumor was completely removed which was in one piece, well defined and no spreading was there. After the surgery, blood was coming out in a tube which was inserted on the left side of the abdomen. On specific query made by the deceased and appellant no.1, respondent nos. 2 and 3 told them that the pancreas was perfectly normal but during operation on 2.4.1990, it was slightly damaged but repaired instantly, hence there was no cause of any anxiety. When the

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.

- (3) 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 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.

fact of damage to pancreas came to the notice of the deceased, he asked for the details which were not given. The appellants alleged that the tumor taken out from the body was not malignant.

17. The complaint of the appellants was thoroughly examined and dealt with by the National Commission. The National Commission had decided the entire case of the appellants in the light of the law which has been crystallized by a number of cases decided by this Court. Some of them have been extensively dealt with by the Commission.

18. The allegations in the complaint were strongly rebutted by Dr. Kapil Kumar, respondent no. 3. Dr. Kapil stated in his affidavit that the anterior approach was preferred over the posterior approach in the suspected case of cancer, which was the case of Shri Sharma. The former approach enables the surgeon to look at liver, the aortae area, the general spread and the opposite adrenal gland. The risk involved was explained to the patient and the appellants and they had agreed to the surgery after due consultation with the family doctor.

37. During the second operation on 23.5.1990 it was found that there was matting together of proximal jejunal loops (intestinal loops) in the left infra-colic compartment subjacent to root of transverse mesocolon and it was technically hazardous to do feeding jejunostomy. That is why a deviation was made. Dr. T.K. Bose and Dr. Kapil Kumar were not obliged to follow every detail of Dr. Nandi's recommendation as appropriate decisions were to be made in accordance with the findings at surgery. It would be pertinent to point out that Dr. Nandi's note was at best a theoretical analysis whereas Dr. Bose was the man on the spot. Matting of jejunal loops was not known to Dr. Nandi and came to be known only on the operation table.

38. It is submitted that the bleeding (hematemisia) was due to stress ulceration and not due to damage to the stomach by a Nasodudoenal tube. Such bleeding is quite common after major surgery. It is denied that fundus of the stomach was damaged during surgery or during placement of the Nasodudoenal tube as alleged by the appellants. In fact, the site of surgery was nowhere near the fundus of the stomach. It is denied that any procedure adopted by Dr. Bose and Dr.

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(iii) “Adrenocortical malignancies are rare, often at advanced stage when first discovered and should be approached using an anterior approach to allow adequate exposure of the tumor and surrounding soft tissue and organs”. – Technical Aspects of Adrenalectomy – By Clive S. Grant and Jon A. Van Heerden – Chapter Thirty Five.”

20. The medical texts quoted above speak of both the approaches for adrenalectomy. Nowhere the appellant no.1 has been able to support her contention that posterior approach was the only possible and proper approach and respondent no. 3 was negligent in adopting the anterior approach.

21. Apart from the medical literature, Dr. N. K. Shukla, Additional Professor at AIIMS and a well-know surgeon stated in unequivocal terms in response to a specific question from the appellant no.1 that for malignant tumors, by and large, we prefer anterior approach.

22. Dr. Nandi, Professor and Head of Department of Gastro-Intestinal Surgery at AIIMS also supported ‘anterior’ approach and confirmed and reconfirmed adoption of ‘anterior’ approach in view of inherent advantages of the approach.