Head To Head

Are large compensation payouts for negligence good for medicine in India?

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Author's reply (by Dr. Kunal Saha)

As a practicing doctor in India and convener of a medical group in Chandigarh, Dr. Neeraj Nagpal’s response to our article is hardly surprising. In fact, Dr. Nagpal has virtually mimicked what I have already stated in the article, i.e. most doctors in India have predicted a “doomsday scenario” for future of Indian medicine in the wake of the recent Supreme Court’s award of a large compensation for medical negligence.

Dr. Nagpal has suggested that doctors in India may go bankrupt to pay compensation of multi-crore rupees which was awarded in this particular case without realizing that Apex Court had already considered this aspect and awarded more than 99% of the compensation against the private hospital and not against the doctors with only between 5-10 lakh rupees awarded against the three negligent doctors who actually caused the wrongful death of the patient. The victim in this case was treated at a very wealthy private hospital in Kolkata with assets worth hundreds of crores of rupees considering which the Supreme Court imposed a compensation of more than 11 crore rupees. Had the patient been treated at a small rural hospital, there is no reason to imagine that learned Judges would not have the wisdom to consider this factor (ability to pay) while determining the quantum of compensation.

But for the present unsustainable healthcare situation in India, Dr. Nagpal has put the blame virtually on everybody including ordinary people, courts, judges and even the law (“Consumer Protection Act”) except the members of his own profession, i.e. doctors of India. As I have unequivocally stated in my article, large compensation can play a very important role against
medical negligence in India today only because there is virtually no other recourse to establish checks and balances for the errant doctors.

Widespread corruption in the medical regulatory bodies including Medical Council of India (MCI) is a common knowledge in India today. Doctors candidly accept kickbacks ("commission") from diagnostic laboratories without any sympathy for the poor patients. They blatantly trample over the existing ethical and medical laws knowing fully well that they would be shielded by their medical colleagues in the regulatory bodies. Hardly any doctor can be found in India to step forward and honestly testify in public or before the court of law even in the most brazen incidence of medical negligence. A man such as Dr. Ketan Desai, who occupied the top post in MCI for decades until he was eventually charged with taking bribes by the top law-enforcing agency (CBI) in 2010 only to be re-elected unopposed to the MCI again in 2013 by his medical colleagues (1). Medical degrees can be obtained by poor quality but wealthy students simply by paying hefty “capitation” fee or donation to the mushrooming private medical colleges across India today.

These are the root causes for the abysmal healthcare delivery system for most people living in modern India which is reflected from the horrific stories of deaths and injuries of patients that appear in the news almost on a daily basis. Blaming the insensitive public, inept government or impassive judiciary cannot solve the present medical crisis in India. The onus is squarely on the members of the Indian medical fraternity to restore public trust in the medical profession. And for that to happen, righteous and caring doctors must step forward and pick up the cudgel to run the healthcare system in a fair and honest manner. Until then, courts of law may remain the only hope to stop the rot in Indian medicine and to bring justice for thousands of hapless victims of medical negligence across India.


Competing interests: No competing interests

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Hands that shake should not wield the scalpel (by Dr. Neeraj Nagpal)

The article is thought provoking and timely. The judgment has caused a panic among medical professionals in India with regards to the quantum of compensation which has been awarded. Such like compensations of exceedingly high amounts are unrealistic and have serious
implications for medical professionals and patients alike. This judgment has now set a precedent as regards to quantum of compensation which can be awarded. Since this judgment by supreme court there have been two judgments by lower courts/commissions of unheard of amounts (for those courts) as a trickle down effect (1,2)

For the patients also it is not good news because for every patient who claims compensation in crores, millions of other patients will pay for his indulgence by paying extra amounts charged by doctors to cover for such eventualities. A doctor in India today takes a professional indemnity policy for a particular amount which is usually around 10 lacs for which he pays a premium of 3000-5000 Rs per annum depending on whether he is a physician or a surgeon. If a doctor today has to cover himself against a claim of 11.5 crore he has to pay a premium of 3,45,000 to 5,75,000 Rs per annum only which means if he attends to 30 patients every day he will have to charge Rs 53 over and above his regular consultation fee to cover for paying this premium. This has to be seen in context with average consultation fee being anywhere from Rs 30 to Rs 300. There are no free lunches and hence to pay 11.5 crore to someone, everyone else will have to pay. Already there is a quantum jump in average charges of various procedures all over the country following 1995 judgment of IMA vs V P Shantha and others (3) which is out of proportion of the inflationary correction.

This is not to deny any need for accountability. It is the summary process under CPA which is flawed and urgent remedial measures need to be made failing which private medical facilities which fulfill bulk of healthcare needs of the country will be forced to shut shop. Govt does not have the resources, inclination, or manpower to provide universal state sponsored healthcare.

What is more scary is the fact that as per law there is no cap on this amount and what was unthinkable 10 yrs ago is now a fact and 1000 crores may be unthinkable today but may become a fact, because as per law there is no cap or limit on the amount of compensation that can be awarded by courts. (In this particular judgment being discussed 97 crore was asked for along with interest amounting to total nearly 200 crores)

There is another horrendous aspect of this judgment. India is a resource poor country. In any major public sector or private sector hospital there is unimaginable rush and patient overload. If two patients need a ventilator in a hospital and only one is available what will the doctor do. One patient is high net worth individual and can ask for compensation in crores, the other a pauper whose death will result in a nominal compensation. Is the doctor supposed to choose the rich and hence bring a financial bias into treatment decisions because of this judgment. This is a frightening but real prospect not faced earlier by medical men. Are medical treatment and resources in India even in Government hospitals going to be the prerogative of the rich

Medical profession is unique and cannot and should not be compared with other service providers as defined in Consumer Protection Act. As practiced in India it is nothing short of miracle and thanks to the dedication, work ethics and empathy of doctors we have cure rates
similar to most developed countries for most of the diseases. Experience in surgery and various procedures is far more of Indian doctors than some of the foreign dignitaries who come to give lectures in conferences. This is despite the fact that in India doctors have to battle and compete with State sponsored quackery. Myths and misconceptions are deep rooted in Indian psyche. Working in such environment would be impossible for the foreign and NRI doctors and to try to impose standards and protocols of USA in India is nothing short of absurd. If we want ideal medical treatment you have to have ideal treatment environment.

High net worth individuals need to take individual life insurance and disability insurance policies commensurate with their earning capacity to compensate them for their loss in case of a (medical) mishap.

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3. Indian Medical Association vs V P Shantha and Ors 1996, AIR pg 550

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