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The Convolution of Establishing Causation in Medical Negligence

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ABSTRACT

This paper is an analysis of how causation is established in medical negligence. Causation is how a case of medical negligence is established. There are three types of tests that can be used and three types of damages that can be awarded to a person. The first section of the paper discusses a landmark case of medical negligence wherein, with the help of the facts, arguments, and judgments, causation is determined in the discussion section. The second section explains the three tests of causation. The final section of the paper focuses on the criticism of a test of causation and the transition to another test of causation.

Keywords: *negligence, medical field, causation, contracts, informed consent*

I. INTRODUCTION

Medical negligence is a type of tort with monetary compensation as the common remedy for the damage encountered. Damage usually results in death or any physical, psychological, or psychiatric injury suffered by the patient because of the doctor's or nurse's negligence². To establish medical negligence, three criteria have to be fulfilled. First, the medical professional owes a duty of care. Second, there was a breach of that duty. And lastly, due to the breach of duty, the patient suffered a loss. In the last two steps, the causation is determined. Causation refers to the reason or cause of the injury sustained, which resulted from the breach of the duty to take care. In the second step, causation is established with the help of the Bolam and Montgomery tests, whereas the 'but if' test is put to hypotheticals to prove causation in the third step³

However, establishing causation is not easy. It requires proving that the medical professional's actions are the sole reason for the injury suffered by the patient. Furthermore, along with probability, foreseeability is also investigated. The distinction between the two is that probability examines the likelihood of a situation becoming a reality, whereas foreseeability examines the ability of a situation to be predicted. analyses how well one can reasonably predict

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² Cheluvappa. & S Selvendran, *Medical Negligence-Key Cases and Application of Legislat*, Annals of Medicine and Surgery 205-211 (2020).

³ Phillips. et al., *Medical Negligence: A Neurosurgeons Guide*, 23 Neurosurgery (2021).

the potential consequences of a particular action, such as the damage or injury that may result from negligence or breach of contract. Usually, the "but if" test is considered a good starting point to establish a connection between the respondent's conduct and the appellant's injury. Additionally, it also examines the different outcomes that resulted from the defendant's actions and omissions. There are three types of compensation awarded to the appellants for their loss. The first one is compensatory damage, wherein money is provided to recover from the loss. Second, economic damages (which include medical expenses, wages lost, and depreciated future earnings) and non-economic (mental trauma, anguish, emotional distress, and loss of consortium) are being compensated for. Finally, punitive damages are imposed on the authorities in question, such as suspension of the license ⁴

II. CASE ANALYSIS

- **Lakshmi Rajan v. Malar Hospitals Ltd & ORS** ⁵

The plaintiff (Mrs. Lakshmi Rajan) consented to undergo surgery to remove a tumor (fibroadenoma) on her left breast after seeking medical treatment for it at a hospital.

There was no connection between the tumor and her uterus. Aside from removing the tumor, her uterus was also removed by the surgeon without asking for consent or even informing her.

Issues: (1) whether the second party was negligent or provided inadequate service; and (2) if so, how much compensation the complainant is entitled to.

Arguments

By the appellant:

The appellant was informed about the lump by a family doctor who later gave her a reference letter for diagnosis and treatment at the malar hospital. The person to whom the letter was written was a consultant surgeon at the hospital who diagnosed the appellant and identified the condition.

She agreed to the surgery and the next day an ultrasound study was conducted on the whole abdomen which was concluded to be a 'normal test'. The surgery took place a day after the abdomen inspection, but when the appellant woke up, she realized that not only the lump in her breast removed but also her uterus was surgically eliminated which she had not consented to. Though the doctor informed and took consent to perform surgery for removing the lump,

⁴ Qirjo, A. "Medical malpractice: the connection between the doctor-patient relationship and the duty of care." (2021):

⁵ Lakshmi Rajan v. Malar Hospitals Ltd & Ors (13.06.1997-TNCDRC)

he did not mention anything about the uterus surgery which fulfills the first two criteria of medical negligence (establishing a breach of duty to take care and breach of duty). Post-operation, the appellant faced complications such as pus in the vagina, severe body pain, and pain in the limbs, and also faced difficulty passing urine and motion.

But the authorities did not take any action and discharged her. In the discharge summary as well, they wrote that the 'post-operative period was uneventful despite the excruciating pain the appellant went through. The pathology report did not mention anything dangerous enough to perform on-spot uterus removal surgery.

After complaining for almost a week about vaginal pain, surgery was conducted without anesthesia. This satisfies the third criterion which is injury due to a breach of duty to take care.

Eight months later, the appellant still suffers from body pain and difficulty in passing urine and motion.

By the defendant:

The defendant argued that the reference letter provided to him, along with the lump in the breast mentioned the profuse bleeding P.V. which was realized after the appellant consulted with a gynecologist. Thus, the appellant was already aware of the condition of her uterus. It was also stated that the doctor informed the appellant about the procedure to be followed for removing the lump as well as removing the uterus, to which the appellant and her husband consented. The preparation for the surgeries is usually done a day before the actual date. On this basis, the appellant's chest (left breast) and the entire abdomen area were cleaned before the operation. This indicates that the appellant was aware of the surgery beforehand. And as for the vaginal operation for draining pus, the defendant argued that the reason they didn't give anesthesia was that the appellant had a full stomach even though the doctor had asked her to remain on an empty stomach before the surgery.

Bench Order

Based on the evidence procured at the hearing, the bench does not find the defendant liable. The strongest evidence produced was the pathology report which clearly stated the patient suffered from 'fibroid uterus and chronic cervicitis'. Cervicitis is commonly found in the prolapsed uterus which further proves that a hysterectomy was required. The complainant took advantage of the fact that the term 'prolapsed uteri was not used in the final discharge summary and filed a false complaint.

Therefore, the complainant is not entitled to any compensation, and the case was dismissed in the favor of the defendant.

III. TESTS TO ESTABLISH CAUSATION IN MEDICAL NEGLIGENCE

1) **The Bolam test**⁶

The test states that a case shall not be constituted as medical negligence if the code of conduct followed by the doctor is considered to be a standard approach to medical opinion. The claim was upheld by the court in Bolam v. Friern Hospital Management.

2) **The Montgomery test**

The Montgomery test states that a competent person in the eyes of the law has the right to decide which procedure they should opt for, and consent to the same is obtained before the surgery. The doctor is assumed to take a reasonable duty of care to ensure that the patient is clear with their issues and the procedures for the same, along with alternative options in case they aren't sure if they want to proceed with the procedure.

3) **'But for test'**⁷

The burden of proof is reversed. Usually, the burden of proof is on the plaintiff, which is then transferred to the defendant. But in this test, the burden of proof rests on the defendant wherein they have to prove that the same damage would have occurred even if they had not participated in the event. And if they fail to do so, the case rests on the condition of medical negligence.

IV. DISCUSSION

An attempt to establish medical negligence in the case of Lakshmi Rajan v. Malar Hospitals is made in this section. There are three steps to do the same:

1) **Establishing a duty of care**

The surgeon owed a duty of care toward the appellant since he was going to perform surgery on her. Though he had diagnosed and conducted tests to identify the lump in her breast, he did not do the same with the uterus. Rather he acted upon the inference of the reference letter.

2) **Breach of duty of care**

When the abdominal test was conducted, it came out normal but yet the doctor proceeded with

⁶ Yadav, J, M Yadav and S Chand. "Medical Negligence and Its determinants." International Journal of Recent Scientific Research 11 (2020): 40082

⁷ Sim, E. "Rebuttable Presumption of Causation in Non -Custodial Breaches of Fiduciary Duty Potentially Too Onerous? Singapore Comparative Law Review, 2021, 169 -173." (2021)

the hysterectomy without informing the appellant whatsoever. Hence, there was a breach of duty.

Over here, causation is also established through the Montgomery test. A doctor is supposed to elaborate on all the issues and the procedures to follow, after which the patient gives signed consent as a piece of evidence that they agree to follow the proceedings. However, though Lakshmi Rajan agreed to surgery for lump removal, she wasn't informed or given consent for the uterus removal surgery.

3) Damage suffered due to breach of duty

As observed in the case, right after the surgery the appellant suffered complications. Only after a week of complaining did her plea of draining the vaginal pus answer. But there as well, she was operated on without the use of anesthesia. After 8 months of the surgery, the appellant still suffers from body pain and difficulty passing urine and motion.

Thus, the three criteria are fulfilled and medical negligence is established.

V. CONCLUSION

Medical negligence is a type of tort which involves service rendered by professionals. It is a three-stage test wherein the duty of care between the doctor and patient is established. This then escalates to establishing a breach of that duty and, finally, what was the result or damage of the breach of duty. Establishing a duty of care might sound easy since it's a medical professional's primary duty. But it isn't just that easy. To prove the duty of care, three conditions must be fulfilled as stated in *Rd. Laxman Balkrishna Joshi v. Dr. Trimbark Babu Godbole and Amr.*

- 1) The duty of care while deciding whether to take up a case,
- 2) What type of treatment will be used, and
- 3) Whether or not the treatment was administered correctly.

If any of the above duties are breached, then a connection can be established. This then leads to the next steps, wherein causation establishment is required. The three tests of causation shall be applied to see if there was negligence on the part of the doctor. It is not mandatory to prove all three tests to establish causation; either one works as causation means finding a cause that resulted in injury. The Bolam test, however, has its criticisms. The test states that an act may not amount to negligence if it is an accepted mode of procedure. The test was derived from the case of *Bolam v. Friern hospital management*. During electroconvulsive therapy at the defendant's mental health hospital, the claimant was injured. In his negligence lawsuit, he

claimed that the doctors had failed to provide muscle relaxants or manually restrain him under their duty of care. According to expert opinion, most doctors are opposed to chemical relaxants. There was also a small percentage of competent doctors that opposed manual restraints because of the increased risk of injury. However, it was observed that the person undergoing the procedure is the patient. Hence, they must be aware of everything that must be done in the procedure. which is where the transition to the Montgomery test happened. This test evolved from the case of *Montgomery v. Lanarkshire* wherein a diabetic woman of short stature gave birth vaginally. She experienced complications in the process after shoulder dystocia caused cerebral palsy as a result of hypoxia. Montgomery didn't hear about the risks associated with normal delivery from her gynecologist, even though she was concerned about the baby's size. In turn, Montgomery sued the doctor for negligence and for not informing her of the risks of the procedure she chose. Establishing causation is ultimately how a case is proven to be a case of medical negligence. There might be criticisms of each test, but if they can derive a link between the harm caused to the patient and the doctor, then the test fulfills its purpose. Though medical negligence is a type of tort, it could also be tested in criminal cases. The Indian penal code comprises section 304A, which speaks about medical negligence as a crime.
