

Original Article

Ophthalmology Medical Negligence Cases Decided by NCDRC: Retrospective Study

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ABSTRACT

In the present scenario, medical negligence has become a serious issue in India and many a times it has led to litigations in consumer courts and/or in civil or criminal courts. The present study's focus is to highlight the pattern and causes of medical negligence in cases related to ophthalmology speciality decided by the National Consumer Dispute Redressal Commission (NCDRC) and give an insight into pattern of compensation awarded by the NCDRC. The NCDRC decided 942 cases of alleged medical negligence cases of all specialties from year 2002 to February 2018. Out of these 942 judgments, 30 judgments of alleged medical negligence cases related to ophthalmology specialty from year 2002 to February 2018 were collected for the present study. Out of 30 cases, in 22 cases (73.3%) medical negligence was proved. Majority of cases (66.6%) were diagnosed with suffering from cataract followed by glaucoma (10%). In 16 cases (53.33%), information regarding medical negligence at stages of patient was not available while in 11 cases (36.67%) deficiency of service was present at post operative stage. Highest compensation claimed was Rs.1 Crore while lowest claimed compensation was Rs 2 Lac. Highest awarded compensation was 6 Lac while lowest awarded compensation was 25,000. Average compensation claimed and awarded was Rs 2,426,969.00 and Rs 21,4000.00, respectively. Due to increasing awareness among consumer regarding their rights, there are rising trend of complaints filed in various courts for alleged medical negligence which has resulted in doctors to go towards defensive medicine. This could be detrimental to the society in long run. Therefore, there is necessity to make balance between patient's right and professional honesty and sovereignty. Outcome of this study will help in improving the quality of healthcare and trust and transparency in doctor-patient relationship which ultimately will benefit the society.

Key words: Medical negligence, NCDRC, Compensation, Ophthalmology, Consumer protection act

INTRODUCTION

In Jacob Mathew vs State of Punjab case ^[1] Supreme Court (SC) said that a case of professional negligence is different from occupational negligence. Here, court has referred Jackson and Powell ^[2] which states that professions operate in spheres where in each case

success cannot be achieved and very often success or failure depends upon various factors which are outside the control of professional man. Simple lack of care, error of judgment is not proof of medical negligence on part of doctor. Doctor cannot be held liable for negligence till he follows a practice acceptable to medical profession.

Doctor who does not possess requisite skill or exercise it with reasonable competence may be held liable for negligence.

There are two types of medical negligence, civil and criminal. Negligence in civil law may not necessarily be negligence in criminal law. Gross or very high degree of negligence provides grounds for criminal negligence.

A recent survey conducted by National Law School of India University, Bengaluru ^[3] has pointed out four reasons for the rise in medical litigations in India. These include greater consumer awareness, flexibility and ease provided by consumer forums compared to civil courts, cost involved in medical services resulting in high expectations from medical institutions and litigant mindset among the people.

Every year, about 5.2 million people die due to human errors and adverse events in India.^[4] Cases of medical negligence have increased by 400% in the last decade.^[3]

In Indian Medical Association vs. V.P. Shantha & Ors case ^[5] SC said that Medical services come under the purview of Consumer protection Act (CPA) 1986. Services rendered by doctors and hospitals are covered in the ““service”” as defined under section 2 (1) (0) of the CPA 1986.

Under the CPA 1986, consumer courts have been established at district, state and national level. The district forum can award compensation up to Rs. 20 lakhs while state commission up to Rs. one crore. At the national level, there is a National Consumer Dispute Redressal Commission (NCDRC). Appeals against judgments of State Commissions are heard in this forum. The commission can award any amount of compensation. Appeal against the judgments of NCDRC can be filed only in the SC.

Highest compensation (Rs.11.41 Crore) was awarded by SC in ‘Dr. Balram Prasad vs. Dr. Kunal Saha & Ors^[6] for medical negligence. Once again it has raised important and unsettled issue of compensation awarded by various courts for medical negligence for debate and discussion.

After inclusion of medical profession, doctors were afraid of its impact on their profession. Some of them feel that doctors would go for defensive medicine and hesitate to take risk during treatment due to increased litigation cases in consumer courts. It will also increase cost of medical treatment but gradually they are realizing that it may be beneficial in future. Due to increased awareness, patients understand their rights and this act is also helpful in curbing the activities of quacks. Act improves standards of patient care and makes doctors more responsible and accountable to their patients. It improves trust and transparency in doctor–patient relationship and ultimately benefits the society.

AIMS AND OBJECTIVES

The following aims and objectives have been decided for the present study:

1. To study the pattern of medical negligence cases related to ophthalmology speciality decided by NCDRC.
2. To study the reasons for medical negligence in cases related to ophthalmology.
3. To study the pattern of compensation awarded by NCDRC.

MATERIAL AND METHODS

NCDRC decided 942 cases of alleged medical negligence of all specialties from year 2002 to February 2018. Out of these 942 judgments, 30 judgments of alleged medical negligence cases related to ophthalmology specialty from year 2002 to February 2018 were collected for the study. After thorough study of judgments, 22 cases in which medical negligence was proved were selected for further analysis in the present study. [India’s Medical Negligence Reports from 2002 to 2008 were manually retrieved and India’s Medical Negligence Reports from 2008 to 2018 were available from Website of Quality of Medical Education. Accessed on 14.10.2018 from: URL:<http://www.qmeindia.in/indmednegreports>]

OBSERVATIONS AND DISCUSSION

In the present study, out of 30 cases, 18 cases (60%) were filed before the NCDRC in revision jurisdiction

Table 1: Jurisdiction-wise distribution of cases

Jurisdiction	No. of cases	% of total cases
Original	6	20
Appellate	6	20
Revision	18	60
Total	30	100

while 6 cases each (20%) filed in original and appellate jurisdiction (Table 1).

Out of 30 cases related to Ophthalmology decided by NCDRC, in 22 cases (73.33%) medical negligence proved, while in 8 cases (26.67%) complainants were not able to prove the allegations of medical negligence against doctors/hospitals (Table 2).

Table 2: Distribution of medical negligence cases

Negligence	Cases	
	Number	Percentage
Proved	22	73.33
Not proved	8	26.67
Total	30	100

Perceived loss of vision by patient is second highest after death; therefore, chances of litigations are more in cases of practice of ophthalmology than in other specialty. High cost of treatment as well as high degree of damage compared to medicine and allied specialities; surgery and allied specialities (as ophthalmology) attract more complainants against them. It is easier to prove allegations of medical negligence in surgery and allied branches compared to medicine and allied specialities. More awareness and knowledge among consumers towards their rights after implementation of CPA 1986 may be a reason for this.

A study by Yadav and Rastogi^[7] on medical negligence cases decided by district consumer courts in Delhi found 15 (31.25%) proved medical negligence cases. Difference in the findings on medical negligence cases could be because in the present study only cases related to ophthalmology (Surgical speciality) are included while study by Yadav and Rastogi includes cases related to all specialities (Medicine and allied, Surgery and allied, Dentistry, physiotherapy etc.).

Table 3: State-wise distribution of cases

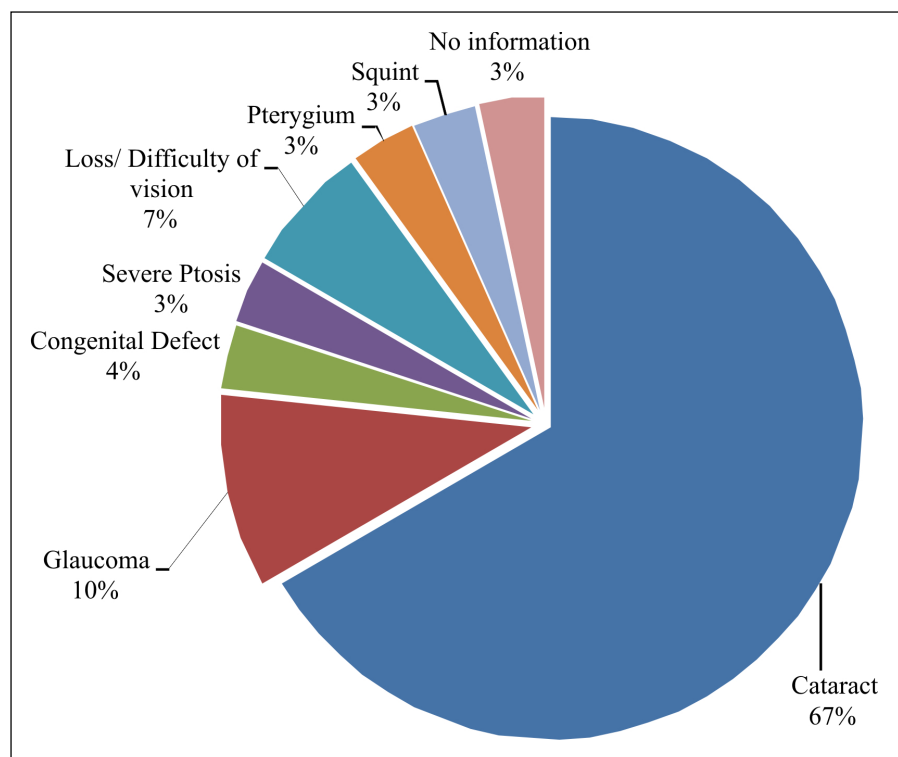
State	Cases	
	Number	Percentage
Andhra Pradesh	3	10
Chandigarh	1	3.33
Chhattisgarh	1	3.33
Delhi	9	30
Gujarat	1	3.33
Haryana	1	3.33
Karnataka	1	3.33
Kerala	3	10
Madhya Pradesh	2	6.67
Pondicherry	1	3.33
Punjab	1	3.33
Rajasthan	2	6.67
Uttar Pradesh	2	6.67
West Bengal	2	6.67
Total	30	100

Table 3 showed that maximum number (9) of cases were filed from Delhi followed by 3 cases each from Andhra Pradesh and Kerala, 2 cases each from U.P., Rajasthan, M.P. and West Bengal. Location of NCDRC in the NCT of Delhi, more awareness about consumer rights among Delhi population may be the possible reasons for maximum number of cases filed from Delhi.

In the present study, chief complaint was taken into consideration while other related complaints were excluded for the convenience of study. Majority of cases (66.67%) were diagnosed as suffering from cataract followed by 3 cases (10%) suffering from glaucoma, 2 cases suffering from loss/difficulty of vision. One case each (3.33%) was diagnosed as suffering from congenital defect, pterygium, squint etc. Maximum number of cases was diagnosed as suffering from cataract because cataract is most common disease of eye (Figure 1).

Only 17 cases (total cases = 30) were included in the present study for compensation claims while other 13 cases were excluded due to non-mentioning of compensation claims. In many cases, interest was also claimed and awarded but not included in the study.

Figure 1: Diagnosis-wise distribution of cases



Highest compensation claimed was Rs. 1 Crore (2 cases) while lowest claimed compensation Rs. 2 Lacs. Average compensation claimed was Rs. 2,426,969. Reason for compensation claimed less than Rs. 1 crore in many cases is that most of them were filed before 2002 amendment of CPA 1986.

In 22 cases (73.33%) out of 30 cases in which medical negligence proved, compensation was awarded. Highest compensation awarded was Rs. 6 Lac while lowest awarded compensation Rs. 25,000. Average compensation awarded was Rs. 21,4000 (Table 4).

Pre-operative stage includes consent, history, examination, investigation, diagnosis, pre-anesthetic

Table 4: Distribution of cases according to compensation

Status of compensation	Compensation claimed	Compensation awarded
Average Compensation	2,426,969.00	214,000.00
Highest Compensation	10,000,000.00	600,000.00
Minimum Compensation	200000.00	25,000.00
Total Compensation	38,831,500.00	4,922,000.00

check-up, counseling and treatment while operative stage includes complication during operation, accident during operation, leaving foreign body in operative field, death during operation etc. Operative notes, discharge and follow-up advice, infection, complications etc. come under post-operative stage.

Table 5 showed that in 16 cases (53.33%) no information was present regarding deficiency in service at stages of patient. In 11 cases (36.67%) deficiency of service was present at post-operative stage while during operation 2 cases (6.67%) showed deficiency in service. One case had deficiency at pre-operative stage.

Table 5: Stage of patient and distribution of cases

Stage of patient	Cases of alleged medical negligence	
	Number	Percentage
Pre-operative stage	1	3.33
During operation	2	6.67
Post-operative stage	11	36.67
No information	16	53.33
Total	30	100.00

SUMMARY AND CONCLUSIONS

This study was designed to throw light on the pattern of medical negligence cases with reasons related to ophthalmology speciality decided by NCDRC and also to find out the pattern of compensation awarded by NCDRC. The present study revealed that:

- In majority of cases (73.33%), medical negligence proved.
- Out of 30 cases, maximum numbers (9 cases) were filed from Delhi.
- Majority of cases (66.67%) were diagnosed as suffering from cataract followed by glaucoma.
- Highest claimed compensation was Rs. 1 Crore while lowest claimed compensation Rs. 2 Lacs.

Highest awarded compensation was Rs. 6 Lac while lowest awarded compensation Rs. 25 thousand.

In half of cases (53.33%), no information was present regarding deficiency in service at stages of patient followed by deficiency of service at post-operative stage (36.67%).

RECOMMENDATIONS

1. Results of present study suggest that in future similar studies should be conducted in order to find out the new and emerging causes of medical negligence and also to find out the pattern of compensations awarded by consumer courts and/or judiciary in these cases.
2. Recently consumers are getting more aware towards their rights therefore doctors are advised to go for Indemnity Insurance cover to prevent loss by complaints regarding alleged medical negligence.
3. Most of the complaints regarding medical negligence are related to high cost of treatment therefore

Government should increase funding for healthcare and coverage by health insurance so that cost of healthcare can be controlled to some extent.

4. Good communication skill with accurate and proper documentation is helpful in reducing medical negligence cases against doctors and hospitals to a large extent.

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