REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).6507 OF 2009

DR. (MRS.) CHANDA RANI AKHOURI & ORS. **APPELLANT(S)**

VERSUS

DR. M.A. METHUSETHUPATHI & ORS. **RESPONDENT(S)**

JUDGMENT

Rastogi, J.

1. The sad demise of husband of appellant no.1 after his long illness on 3rd February, 1996 has resulted in initiation of the legal proceedings at the instance of appellant no.1 along with her children on a bona fide belief that the cause of death of her late husband was post operative medical negligence and follow-up care.

2. The National Consumer Disputes Redressal Commission (hereinafter "the Commission"), after appreciating the material on record, including the evidence led by the parties, arrived to a conclusion that it was not a case of post operative medical negligence as being alleged by the appellants and dismissed the complaint by the judgment impugned dated 21st July, 2009 which is the subject matter of appeal filed at the instance of the appellants under Section 23 of the Consumer Protection Act, 1986.

3. In order to appreciate the issue involved in the instant appeal, it may be necessary to cull out the facts relevant for the purpose. Complainant no.1, the widow and complainant nos.2 and 3, the minor children of deceased Naveen Kant, jointly filed a complaint, inter alia, alleging that in the first instance in April, 1990, Naveen Kant developed hypertension and was under the treatment of Dr.P.D. Gulati, Nephrologist, but when no positive changes had come forward, Dr. Gulati advised him for renal transplantation and since then, Naveen Kant was under regular dialysis at the hospital in Delhi under the supervision of Dr. Gulati. When some of his well-wishers informed him about a reputed Nephrologist, Dr. M.A.

Muthusethupathi, OP No.1 who is performing kidney transplant surgery at Madras and after going through the entire medical record and seeking opinion of OP No.1 and after completion of all legal formalities as being contemplated under the provisions of the Transplantation of Human Organs and Tissues Act, 1994 (hereinafter "the Act 1994") and taking into consideration the fact that dialysis twice a week may not have been possible for longevity and for better life span of the patient Naveen Kant, the family took a decision to undergo for kidney transplantation and on the advice of OP No.1, the patient Naveen Kant was admitted to OP No.6 (Aswini Soundra Nursing Home), which is registered under the Act 1994 and a kidney transplant surgery was successfully performed on 12th November, 1995 by a team of 12 experts headed by OP Nos.1, 2 and 5, who are admittedly well qualified and experts with wide knowledge and experience in their respective fields and after the medical condition of Naveen Kant was reviewed by OP No.1, he was discharged from OP No.6 hospital on 24th November, 1995. It may be relevant to note that the doctors who had conducted kidney transplant of the patient have conducted more than 900-1000 renal transplants with good results, but there are cases where patient died even after successful

kidney transplant for various reasons which cannot be even under the control of the doctors.

4. It reveals from the record that despite all post operative medical treatment and follow up care of the patient under the supervision of medical experts, still the destiny could not save him and he finally died on 3rd February, 1996.

5. The complaint of the appellants was that while Naveen Kant was discharged from OP No.6 hospital on 24th November, 1995, he was asked to attend as an outdoor patient for dressing of the wound at the place of incision, but his complaint throughout was that while he was in ICU, he had a pain in his left forearm where intravenous drugs were injected and at the given time, he was assured that the pain would subside in due course of time and as and when OP No.1 came for review, it was the consistent complaint of Naveen Kant of pain in the left forearm since he was operated and the day he was discharged on 24th November, 1995 and within a short period of 7 days on 30th November, 1995, OP No.1 noticed the onset of cellulitis in Naveen Kant's left forearm and there was a recurrence of abscess at other points, but still the doctors did not take it seriously and conducted

investigations into the cause of pain and later on 16th December, 1995, Naveen Kant developed severe headache coupled with loss of proper vision in the right eye and also started vomiting. OP No.1 pointed out these problems to the doctor dialysis in-charge of OP No.6 hospital, who used to administer necessary I.V. injections and do the dressing.

6. However, on 21st December, 1995, on the advice of OP No.1, Naveen Kant was again admitted to OP No.4 hospital and he was administered anti convulsion injection. Although attended by OP Nos.1, 3 and 5, headache, fever and pus in his left forearm still persisted. OP No.5 made a long incision in the left forearm to drain off the pus, but because OP No.1 was unavailable on 30th December, 1995, OP No.2 was called upon to take care of the patient.

7. Later, more complications crept in and because of complications, there developed abscess in pancreas and liver and the X-ray showed some abnormal developments in the lung and that later converted into Septicemia. Ultimately, the required potency of antibiotics administered or the quality of these antibiotics also failed to respond. He was later moved to ICU on instructions of OP No.3

and in the morning of 31st January, 1996, OP No.1 also visited Naveen Kant, who was at that time in unconscious stage, even after that, his condition continuously deteriorated and the fact is that no one attended to the complaint made by Naveen Kant and finally he could not be saved and left for heavenly abode on 3rd February, 1996. This, according to the appellants was the cause of post-operative negligence and follow up care on the part of the doctors and the nursing staff of the hospital who had not provided proper medical care to Naveen Kant and attributed negligence on the part of the treating doctors and the hospital and claimed special damages/ general damages for a total sum of Rs.95,16,174.33/-.

8. The respondents contested the complaint by filing reply affidavits, wherein it was stated that respondent No.1 who was a treating doctor(OP No.1) is a Senior Nephrologist who did M.D. (General Medicines) at Stanley Medical College in 1968 and after doing his D.M. in 1977 from PGI Chandigarh, he exclusively worked and performed kidney transplantation in Government hospitals and also disclosed his professional skill which he has developed, particularly in the field of kidney transplantation and so also, the

other doctors, OP No.2 Dr. S. Shivakumar and OP No.5 Dr. P.S. Venkateswaran were also the expert doctors in performing kidney transplantation and have a rich professional experience and as regards OP No.6 hospital, where kidney transplantation was performed, it was duly registered hospital under the Act,1994 and is a fully equipped hospital for transplantation and patient Naveen Kant after successful surgery of the kidney transplantation and after 12 days in ICU with all medical protocols followed and taking into consideration his overall health, discharged on 24th November, 1995.

9. It is further stated that the hospital records for the period 10th November to 24th November, 1995, the sequence of events relating to the immediate post Transplantation Surgery period revealed that the surgery was successfully performed on 12th November, 1995 and later on 13th November, 1995, the patient developed low grade fever for a few hours in the morning and there was no other evidence of any bacterial infection and Injection Reflin was administered to him and after all tests were undertaken on 14th November, 1995, and taking into consideration the positive response of the patient, he was discharged on 24th November, 1995 and till the date of discharge, the

patient was subjected to periodical and routine visits by the Specialist Surgeons, Nephrologists and was under a constant medical observation. The medical observation of the patient as seen from the case sheet is extracted hereunder:

> "Afebre – No Fever.
>
> Lungs clear
>
> CVS S1 S2 – Normal Sound (Cardio Vascular System)
>
> Abdomen – Soft-Mild distention.
>
> NAD – Nothing abnormal detected.
>
> No Oedema – No swelling throughout the body."

10. On 17th November 1995, the Urinary catherer tip grew klebsiella on culture for which Ciprofloracin was started. On 24th November, 1995, the patient was discharged after remaining under post operative care for 12 days. Although complaints are made by the patient of its own kind, but he was always attended and taken care of and when the patient was called upon to continue to attend as an outdoor patient, all medical assistance possible at the command of the respondents was extended to him. It is unfortunate that the patient could not be saved despite the best medical assistance being extended to him by the experts of the field.

11. On behalf of the complainant, evidence was led by Mrs. Vimla Akhori, relative of appellant no.1, Dr.(Mrs.) Minii Rani Datta, sister of appellant no.1, Col. Dr. Ashok Chopra, MBBS General Surgery and Dr.(Mrs.) Sophia Ahmed, as medical experts who are undisputedly not the Nephrologists. So far as the first two witnesses (relatives of appellant no.1) are concerned, they have just narrated the statement of fact which was narrated to them by the appellants being their relative and both the witnesses Dr. Ashok Chopra and Dr. Sophia Ahmed was neither expert of kidney transplantation nor a qualified Nephrologist.

12. So far as the so-called expert evidence adduced by the appellants before the Commission is concerned, Dr. Ashok Chopra, who was a Consultant Surgeon in the BSES Global Hospital at Andheri (West), Mumbai, admittedly passed out his MBBS examination in the year 1974 and only performed general surgery during his tenure in the Army and later left the Army and served as Surgeon in Bareilly and later became a Surgeon in BSES Hospital, Andheri (West), Mumbai, although stated in his affidavit obviously based on the case sheet of the patient that the respondents have not

taken post operative care of the patient and have failed to control and treat infection that has manifested itself in the form of persistent pain in the left forearm of the patient at the place where a needle had been inserted for injection of drugs in the OCU of OP No.6. Timely and adequate medical intervention was absent in post operative medical treatment to the patient and also opinion was expressed by him regarding the drugs administered to the patient and also stated about the time the patient was discharged after 12 days of his surgery and rehospitalization of the patient in OP No.4 hospital on 21st December, 1995 which was not a registered hospital under the Act, 1994 and the patient should have been admitted in OP No.6 hospital which was registered where the kidney transplantation was performed and on this account, OP No.1 has failed to perform his duty towards the patient by allowing him to be lodged in an unregistered hospital i.e. OP No.4. Although it has been admitted by him that the operation was successful, but because of the lackadaisical attitude and post operative care not being properly administered to the patient, it created abscess and went into septicemia, which could easily have been retrieved out of the dangerous infection leading to multi organ

failure and in this way has expressed his opinion that there was a post operative negligence on the part of the respondents.

13. The second expert witness appeared on behalf of the appellants was Dr. Sophia Ahmed. She took MBBS from Patna Medical College and later did internship in Internal Medicines at Queens Hospital, Central New York and remained as a resident in Neurology at University Hospitals and Clinics at USA for almost three years and has a Fellowship in Clinical Neurophysiology and Epilepsy. With no expert knowledge of the subject based on the medical reports made a statement of a medical negligence being performed by the respondents and expressed her opinion that in the post transplant phase, patient manifested clear symptoms of infection while in the ICU and the patient was not recovered adequately for nosocomial infection and his manifest problems and indicators were not addressed by the attending doctors with seriousness and urgency and at critical junctures, the retained nephrologist displayed complete lack of professional concern for the patient and this according to her was a post operative medical negligence being

committed by the respondents and only because of their lackadaisical attitude, they lost their patient.

14. On the other hand, the respondents who indeed were themselves qualified Nephrologists and experts in the field of kidney transplant operations and this fact is not disputed by the appellants as well in support thereof have produced two expert witnesses, Dr. S. Sundar and Dr. Arun Kumar, who are qualified Nephrologists.

15. Dr. S. Sundar, Director and Chief Nephrologist of Karnataka Nephrology and Transplant Institute, Bangalore stated that out of his long experience in having performed more than thousand kidney transplantation surgeries in the past 22 years and based on the evidence of literature relating to kidney transplantation, increase in total count (leucocytes) is a common phenomenon in most of the renal transplant recipients, who have been administrated Corticosteroids. Sometimes, rise in total counts does not per se mean infection but there is no reason to conclude that the patient ought not to have been discharged after 12th day of surgery. It is also stated that leucocyte count will not rise in the post transplant period in absence of any infection that only proves lack of experience and

medical knowledge of renal transplant. The witness has further stated that on 30th November 1995, when the patient was diagnosed cellulitis/abscess, injection Reflin was administered by OP No.1 which was the best medicine for cellulitis and it is a common practice to use this drug in such a situation. It was further stated by him that medical science is not an exact science like mathematics and in medical science experience of doctor treating the patient is important. It has been further averred by him that most transplant patients having fever are treated with drugs like Amikacin and Ciprofloxacin to cover a broader spectrum of organisms in the absence of definitive evidence of organism causing fever. It has been further stated by him that in the field of kidney transplantation and Nephrology, it is very difficult to diagnose and manage any infection in a Kidney Transplant patient and the reasons are many. These are:

(a) Cultures of body fluids (blood, urine, pus, etc.) are often negative.

(b) Even if an organism is isolated, it is not always possible to be certain that the particular organism is the actual cause of fever.

(c) Many of the antibiotics have deleterious effects on the transplanted kidney, thereby necessitating great care in drug selection and dosage.

(d) Un-related donor transplantation need more immune-suppression for the kidney to survive and therefore is more prone to infection.

16. Dr. Arun Kumar, who was also produced on behalf of the respondents, was also a Professor of Surgery, Head of the Department of Surgery, Coimbatore Medical College, Tamil Nadu also stated in his affidavit that he has been a kidney transplant surgeon since 1986 and has performed over 1140 renal transplantations. In clinical practice, positive findings, if any, are always noted in the case records and after going through the record history of the patient, it was stated by him that he did not find any evidence of infection at the time of discharge of the patient from OP No.6.

17. The Commission, after taking into consideration the pleadings so also the evidence on record arrived to a conclusion that the patient Naveen Kant was under the hands of the expert team of doctors and possible medical care at the command of the doctors was fully administered to him and after being discharged from the hospital on 24th November, 1995, still thereafter he was continued to be under treatment and merely because the expert team of doctors could not

save him after his prolonged illness and he died on 3rd February, 1996 that in itself could not be considered to be a case of post operative medical negligence and in consequence thereto dismissed the complaint filed at the instance of the appellants under judgment impugned dated 21st July, 2009.

18. It is not disputed by counsel for the appellants that the kidney transplantation of the patient on 12th November, 1995 was successful and they had complained but the complaint is only in reference to post operational medical negligence as the respondents have failed to discharge their statutory duty of care and medical protocols subsumed thereunder, including follow up care and that according to the appellants is a medical negligence on the part of the respondents in extending treatment to the patient Naveen Kant and being the case of post operative negligence, they have lost their patient on 3rd February, 1996.

19. Counsel for the appellants further submitted that the patient was consistently complaining after he being successfully operated on 12th November, 1995 and shifted to the ICU for pain in the left forearm where intravenous drugs were injected to him and when the

patient was attended by OP No.1 for review, he reiterated his complaint of pain in the left forearm and still he was discharged from the hospital on 24th November, 1995. Later, the patient noticed the onset of cellulitis and recurrence of abscess being at other points, still the doctors have not taken his complaint seriously and conducted investigations into the cause of pain and later he developed severe headache, coupled with loss of proper vision in the right eye and started vomiting. These facts can be supported by the prescription chart of the patient and that was the reason for which the patient was again admitted in the hospital of OP No.4 on 21st December, 1995 and fever and pus in his left forearm still persisted. At that stage, OP No.5 made a long incision in the left forearm to drain out the pus, but since OP No.1 was not available, his condition deteriorated and finally left for heavenly abode on 3rd February, 1996 and this fact has been established from the evidence placed on record of the complainant and other witnesses including the two doctors, who as an expert appeared and recorded a deposition in support of kind of post operative medical negligence committed by the respondents. The Commission, according to the counsel, although noticed these facts but has not at all appreciated the evidence on

record and thus, after reproduction of the facts adduced by the parties, dismissed the complaint in a cavalier manner under the impugned judgment dated 21st July, 2009, which needs to be revisited by this Court at least to examine as to whether it was a case of post operative medical negligence, the reason for which appellant no.1 has lost her husband.

20. Per contra, counsel for the respondents, while supporting the findings recorded by the Commission under the impugned judgment, submits that it is not the case of the appellants that there was any slackness on the part of the team of the doctors while the patient was being operated/underwent kidney transplant on 12th November, 1995 which was admittedly successfully performed by the qualified team of doctors headed by OP No.1 and OP No.5 and thereafter the patient was shifted to ICU for post operative treatment and even thereafter he was completely under medical supervision and got discharged on 24th November, 1995 with further instructions that he should remain as an outdoor patient until the doctors advise him to leave the city and the reason was that as an outdoor patient, dressing of wounds at the place of incision is always to be taken proper care.

So far as the complaint of pain in the left forearm is concerned, these are some complaints which the patients normally make but it is always taken care of and the time heals complaints of the patient, but still all medical assistance which was possible under the command of the qualified doctors was extended to him. It is true that unfortunately, appellant no.1 has lost her husband but this all is destiny.

21. The doctors can provide their best medical assistance available at their command but merely because they could not save the patient, that could not be considered to be a case of post operative medical negligence despite the fact that medical protocol administered by them was duly supported by the two medical experts of the field who appeared on behalf of the respondents, Dr. S. Sundar and Dr. Arun Kumar, and nothing elicits from the cross-examination made by the appellants. In the given circumstances, the findings which has been returned by the Commission needs no further interference by this Court.

22. We have heard learned counsel for both the parties and with their assistance perused the material placed on record. In order to

appreciate the opinion of the Commission, it will be apposite to take note of the legal principles which would apply in the case of medical negligence.

23. In the case of medical negligence, this Court in ***Jacob Mathew v. State of Punjab and Another***[1] dealt with the law of medical negligence in respect of professionals professing some special skills. Thus, any individual approaching such a skilled person would have a reasonable expectation under the duty of care and caution but there could be no assurance of the result. No doctor would assure a full recovery in every case. At the relevant time, only assurance given by implication is that he possessed the requisite skills in the branch of the profession and while undertaking the performance of his task, he would exercise his skills to the best of his ability and with reasonable competence. Thus, the liability would only come if (a) either a person (doctor) did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill which he did possess. It was held to be necessary for every professional to possess the

[1] (2005) 6 SCC 1

highest level of expertise in that branch in which he practices. It was held that simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of the medical professional. This Court held as under:

> **"48.** We sum up our conclusions as under:
>
> (*1*) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in *Law of Torts*, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".
>
> (*2*) Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical 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. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while 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. Similarly, 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

particular time (that is, the time of the incident) at which it is suggested it should have been used.

xxx xxx xxx

(*4*) The test for determining medical negligence as laid down in *Bolam case* [(1957) 2 All ER 118 (QBD), WLR at p. 586] holds good in its applicability in India.

xxx xxx xxx

(*8*) *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence."

24. The term "negligence" has been defined in Halsbury Laws of England (Fourth Edition) para 34 and as settled in ***Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others***[2] as under:

"45. According to *Halsbury's Laws of England*, 4th Edn., Vol. 26 pp. 17-18, the definition of negligence is as under:

> "22. *Negligence*.—Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient."

[2] (2010) 3 SCC 480

25. In para 89 of the judgment in ***Kusum Sharma*** (supra), the tests of medical negligence while deciding whether the medical professional is guilty of medical negligence, varied tested principles have to be kept in view, this Court held as under:

> **"89.** On scrutiny of the leading cases of medical negligence both in our country and other countries specially the United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well-known principles must be kept in view:
>
> *I.* Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.
>
> *II.* Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and 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.
>
> *VI.* 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. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

26. In a recent judgment in ***Dr. Harish Kumar Khurana v. Joginder Singh and Others***[3] , this Court held that the hospital and doctors are required to exercise sufficient care in treating the patients in all circumstances. However, in an unfortunate case death may occur. It will be necessary that sufficient material on medical evidence should be available before the adjudicating authority to arrive at a conclusion that the death is due to medical

[3] (2021) 10 SCC 291

negligence. Even death of a patient cannot, on the face of it, be considered to be medical negligence.

27. It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. In the practice of medicine, there could be varying approaches of treatment. There could be a genuine difference of opinion. However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

28. The term "negligence" has no defined boundaries and if any medical negligence is there, whether it is pre or post-operative medical care or in the follow-up care, at any point of time by the

treating doctors or anyone else, it is always open to be considered by the Courts/Commission taking note of the exposition of law laid down by this Court of which a detailed reference has been made and each case has to be examined on its own merits in accordance with law.

29. Adverting to the facts of the instant case, the treating doctors, OP Nos.1, 2 and 5 all are academically sound and experts in the field of kidney transplantation. Respondent nos.1, 2 and 5 had disclosed their qualifications of which a detailed discussion is not required and their medical expertise in the field of nephrology and surgery in kidney transplantation has not been doubted by the appellants. It is also not the case of the appellants that the patient was not medically treated by the well-qualified doctors at the time when kidney transplant surgery was undertaken on 12th November, 1995 by the team of doctors including OP Nos.1, 2 and 5 in the OP No.6 hospital which is a registered hospital under the Act 1994.

30. Complaints have been made with regard to the post-operative assistance / follow up care, but from the deposition of two witnesses which has come on record, there was a complaint made by the patient

of pain in his left forearm while he was being discharged on 24th November, 1995 after remaining in ICU for 12 days, but he was called upon to continue as outdoor patient and on all the later occasions, even as per the case sheet of the patient, doctors have treated the patient to the best of their medical knowledge and administered the best medical care which was possible. Although the complaint of the patient which remained persistent could not be ruled out despite medically approved drugs being administered to him and if the patient could not be finally saved, that in itself could not be considered to be a case of post operative medical negligence, as is being tried to be projected by the appellants on the basis of the material placed on record.

31. The doctors are expected to take reasonable care, but no professional can assure that the patient will come back home after overcoming the crisis. At the same time, no evidence has come on record at the behest of the appellants which, in any manner, could demonstrate that it was a case of post-operative medical negligence or follow up care on the part of treating doctors and both the doctors who have recorded their statements on behalf of the appellants, Dr.

Ashok Chopra and Dr. Sophia Ahmed, are not expert doctors in the field of kidney transplantation. Merely because they are doctors by profession, what is being expressed by both of them in the affidavits filed before the Commission would not be considered to be an opinion of experts.

32. On the contrary, the two experts who have deposed on behalf of the respondents, Dr. S. Sundar and Dr. Arun Kumar are admittedly experts of the field. At the same time, the respondents – OP Nos.1, 2 and 5 are indeed expert doctors and qualified Nephrologists and this fact has been admitted by the appellants that the patient was under treatment of the best medical professionals and qualified Nephrologists, but those treating doctors could not save the patient Naveen Kant, that in itself could not be considered to be a case of post operative medical negligence which was the main grievance of the appellants before the Commission.

33. After going through the findings which have been returned by the Commission in the order impugned, we see no reason to differ with the view expressed by the Commission keeping in mind the tests enunciated above. Taking note of the fact that treating doctors, OP

Nos.1, 2 and 5 are medical experts in the field of nephrology and so far as OP No.6 hospital where the patient was admitted for transplantation was duly registered under the Act, 1994 and all post operative medical care protocol available at the command of the respondents was administered to the patient, still his physical condition deteriorated and finally he could not be saved, which is really unfortunate, but there cannot be a legal recourse to what is being acceptable to the destiny.

34. In our opinion, the Commission has not committed any manifest error in arriving to a conclusion that in post operative medical negligence or follow up care, there was no negligence being committed by the respondents which may be a foundation for entertaining the complaint filed by the appellants. In consequence thereof, the judgment of the Commission does not call for any interference by this Court.

35. Counsel for the appellants submitted that the nursing home/hospital where the patient was admitted for post-operative care, was not registered under the provisions of the Act 1994. With the assistance of the counsel for the parties, we have gone through

the Scheme of the Act 1994 and the Rules made thereunder. The hospitals where the procedure of transplantation is undertaken are to be registered in terms of Section 14 of the Act 1994, but for post-operative care, particularly after the patient being discharged from the hospital where the procedure of transplantation has taken place, we have not come across any provision under the Act, 1994 where such hospitals are required to be registered under the Act 1994.

36. Before parting, we would like to observe that when the matter was finally heard and concluded, appellant no.1 was present in Court and we made a request as to whether she is still interested to get the final judicial verdict on the issue which has been raised at her instance at one stage by instituting a complaint before the Commission. The appellant made a very candid statement before the Court that she wants now to sum up the matter and what she has lost is, in no manner, recoverable and compensation even if awarded by this Court is not going to be of any solace to her at this point of time. We realize the pain of losing her husband and the trauma she has suffered, but that cannot translate into a legal remedy.

37. Accordingly, we do not find any fault in the reasoning of the Commission, as a result, the appeal is without substance and deserves to be dismissed.

38. The appeal is accordingly dismissed. No costs.

39. All pending application(s) shall stand disposed of.

..... J.
(AJAY RASTOGI)

..... J.
(ABHAY S. OKA)

New Delhi.
April 20, 2022.