

FACULTY OF JURIDICAL SCIENCES,  
RAMA UNIVERSITY

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**RAMA**  
**UNIVERSITY**

**B.S.KUSHWAHA MEMORIAL**  
**INTRA MOOT COURT COMPETITION**  
**MARCH 2020**

# MOOT PROBLEMS

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1. Mr. Ramasamy, (hereinafter referred to as 'the patient') aged about 55 years, father of two, working in a private concern, as an accountant, was the native of a village situated in the district of Madurai in the State of Tamil Nadu. In 2011 - 12, he was suffering from breathing problems for a period of 7 months intermittently. On 01-03-2012, he was having severe breathing difficulty in the morning. So he consulted one Dr. Manoj (hereinafter referred to as the Respondent No.2), a government doctor, working in a Primary Health Centre (hereinafter referred to as the PHC) who treated him free of cost and prescribed some tablets. Those tablets gave relief to the patient for a short interval and he returned back to his routine work. On and off, he had the same complaints and he got treated at PHC.
2. After the passage of 4 months, the Patient again suffered the same problem and he approached the PHC for treatment but he did not get better. Respondent No.2 advised the Patient to go to the nearest Government Hospital for further treatment due to lack of facility at PHC. But, the Patient approached one Dr. Ram Kumar (hereinafter referred to as the Respondent No.3), a doctor running a private nursing home in a small town 10 k.m away from his village. He prescribed some tablets & nebulization and asked the patient to take a few tests (Chest X-ray and Blood test) and visit him again. As there was no breathlessness after the consumption of tablets, he didn't turn up for review and did not take the tests, as advised. Days were passing without any complaints for a period of 6 months.
3. On 17-02-2013, the patient again suffered severe breathlessness and chest discomfort. So he was taken to Quick Heal Hospital Pvt. Ltd (hereinafter referred to as 'the Respondent No.1') located in the city of Madurai, by his family members. A preliminary check-up was done by Dr. Arun, (Respondent No.4) a consultant cardiologist at the above-said hospital. Respondent No.4 suggested several tests which included ECG, Chest X-Ray, blood tests, and Echocardiography. The test reports showed that the patient suffered from myocardial infarction (heart attack). The reports also confirmed that the patient was having high blood sugar. But the Patient did not apprise Respondent No.4 the details of previous treatment taken from Respondents.2 & 3.

Respondent No.4, in the best interest of the patient, suggested for an angiogram to look for the blocks in the blood vessels. On performing angiograms on 18-02-2013, it was found that three major vessels in the heart had blocks ranging from 70% to 90%. Therefore, he referred the patient to Dr.David, a Cardiothoracic Surgeon (hereinafter referred to as the Respondent No.5) and his team in the same hospital for further treatment as it required Respondent No.5's intervention in that case.

4. Respondent No.5 advised that the only treatment at this juncture was to undergo open-heart by-pass surgery (CABG). On 20-02-2013, after getting the consent from the patient, the surgery was performed and the entire process lasted 8 hours. The Patient was shifted to the Intensive Coronary Care Unit (ICCU) under Respondent No.5's instructions for intensive post-surgery monitoring. The first 48 hours after the surgery were uneventful and the patient recuperated well. He was shifted to the Intensive Care Unit (ICU) under Respondents No.4 & 5's treatment. On 27-02-2013, as the patient was feeling better, he was shifted to the ward. After two days, the patient was discharged on 01-03-2013 with cardiac supportive medication and asked to come for review 10 days later.
5. On 09-03-2013, when he was taking rest in his house, the patient developed pain, fever, and discomfort in the operated area and was taken back to the casualty of Quick Heal Hospital. The patient was admitted by the Respondent No.5's Assistant who was also a doctor, as Respondent No.5 had gone abroad to attend an International Medical Conference. The patient was informed about the surgical site infection by the Assistant who also took a swab for culture and sensitivity. Returning on 11-03-2013, Respondent No.5 found the surgical site infected and saw the result of cultural sensitivity. The infection could be treated by cefixime and gentamicin. As the patient was on gentamicin injection already and did not improve, the Respondent No.5 advised his assistant to start on cefixime injection on 12-03-2013. So, his orders were carried out and the Patient was started on injection Cefixime, after a test dose. The next day after the second dose of injection, the patient complained of mild itching over the right forearm near the injection site. The patient's wife, Padmavathi (hereinafter referred to as 'the Appellant') immediately reported this matter to the Staff Nurse on duty at 11 P.M and the Staff Nurse applied some ointment for immediate relief and reassured the Appellant. The facts also revealed that the Respondents No.4 & 5 didn't inquire about the patient regarding the previous treatment taken by the patient if any.

6. The next day at 8 A.M in the evening, another dose of injection was given by the staff nurse as instructed by the duty doctor. The patient complained of severe itching around 9 A.M over the injection site and his face and lips were swollen. Then, the duty doctor was informed and he diagnosed it to be a case of anaphylaxis (allergy) due to the antibiotic injection which can be commonly encountered and started him on steroids. In spite of earnest efforts on the part of Respondent No.5 who had been informed of the development, the patient's condition deteriorated and he died at 10.30 A.M on 14-03-2013 due to above said complications.
7. The Appellant, Padmavathi, a literate, (Wife of the deceased) filed a consumer complaint on 03-07-2013, under the Consumer Protection Act, 1986 before the State Commission against Quick Heal Hospital Pvt. Ltd and Respondents No.2 to 5 on the following grounds:
  - a) The allegation against Respondent No. 2 was that he did not diagnose the condition properly and had treated the deceased for another disease;
  - b) The allegation against Respondent No.3 was that he failed to inform the deceased about cardiac involvement and had asked to perform routine tests that are not relevant to cardiac disease.
  - c) The Appellant also alleged that because of negligence and the lethargic attitude shown by Respondent No.2 and 3, the deceased had landed with a massive heart attack;
  - d) The allegation against Respondent No.4 was that he did not choose the apt diagnostic test to come to a conclusion and made the patient undergo angiogram unnecessarily. Instead, he could have directly referred him to Respondent No.5. Thus, a heavy financial expenditure was caused to the deceased besides unnecessary strains on his health;

- e) The allegation against Respondent No.5 was that he did not perform the surgery properly resulting in a deficiency in service and health complications. As a result, there was an infection that affected the health of the deceased drastically. The Appellant alleged deficiency in service and negligence against Respondent No.5 in the following activities: (a) Negligence in performing the surgery properly; (b) Not informing about the complications that would follow after the surgery; (c) Failure to give proper post-operative care; (d) Delegating the case to his assistant who is not an expert, as he went abroad for the International Conference and thereby there was a dereliction of duty; (e) Failing to inform the allergic complications involved in these type of cases and thereby violating the right of informed consent;
  - f) The allegation against the Quick Heal Hospital was that there was negligence in taking due care of the patients by the staff on duty, applying the principle of Vicarious Liability.
8. The Appellant alleging medical negligence and deficiency in service prayed for compensation of Rs.50 lakhs along with the costs of the suit and Rs.5 lakhs towards the expenses incurred in the treatment as the deceased was the sole breadwinner of the family.
9. The Appellant also prayed the Court to pass such other orders as are necessary for the interest of justice, equity, and good conscience.
10. The State Commission after hearing the arguments of learned counsels appearing on behalf of both the parties passed the following orders on 06- 02-2015 in favor of the Appellant:
- a) The State Commission found no negligence on the part of Respondent No.2 & 3 stating that they did their part. As regards other Respondents, the Commission

found that there were gross negligence and dereliction of duty on the part of the Respondents No.1, 4 & 5 which led to the death of the patient.

- b) The Commission found negligence on the part of the Respondents on the following grounds: (i) Not taking sufficient care while performing the surgery (ii) Diagnostic methods and not caring to ascertain the previous history of the patient (iii) Poor post-operative care; (iv) Delegating the case to a non-expert; (v) Violation of not obtaining informed consent without explaining allergic and other complications.
  - c) So, the Commission directed that each Respondent has to pay Rs.10 Lakhs to the Appellant as the liability of the Respondents was joint and several. The Commission also awarded costs of Rs.10,000/-. However, the Commission did not find any justification for the claim of Rs.5 lakhs towards medical expenditure.
- 11. The State Commission thus held that it was gross negligence on the part of the Respondents No.1, 4 & 5 resulting in a deficiency in service.
- 12. Against the order of the State Commission, both the parties filed appeals before the National Commission. The Appellant filed the appeal on 07-04-15 seeking enhanced compensation of Rs.50 lakhs and the Respondents No.1, 4 & 5 filed the appeal on 14-04-15 seeking to set aside the order of the State Commission.
- 13. The National Commission allowed the appeal filed by the Respondents No.1, 4 & 5 and dismissed the appeal filed by the Appellant for enhancement of compensation on 08-06-2017 and held that there was no medical negligence and deficiency in service on the part of the respondents for the reasons stated below:
  - a) In consonance with views of the State Commission as regards the Respondent No.2 & 3, the National Commission held that there was no negligence on the part of Respondent No.2 as he did his part according to the facilities available in

the Primary Health Centre; when the deceased came for the second time, he also aptly referred to the nearest Government Hospital for further treatment. With regard to Respondent No.3, the National Commission held that he acted diligently and asked the patient to take some tests and to come for a review. But the patient did not turn up and take the tests as advised by Respondent No.3.

- b) In this connection, the Commission observed that “in the medical profession, the rights and duties are mostly inter-related; the Doctor's duty becomes Patient's right and vice-versa. So, in every medical case, the success is on the fulfillment of duties by both the parties.” Applying the above proposition in the present case, the Commission was of the view that there was a serious violation of instructions given by both Respondents No.2 & 3. Hence, there is a breach of duty by the patient in following the instructions given by the Respondents No.2& 3.
- c) In addition to the aforesaid breach, the patient has also concealed the fact of previous treatment (taken from Respondents No.2 & 3) to Respondents No.4 &5.
- d) With regard to Respondents No.4 & 5, the National Commission held that the treatment and diagnostic methods were certified by a team of experts that they were according to medical jurisprudence & standards of medical practice and hence, there was no deviation from it. The Commission also held that the infection and allergic reactions are common for such type of cases which could not be held to be a medical error. Despite that, the Respondents No.4 & 5 tried their best. Hence, the commission stated that there was no medical negligence on the part of Respondent Nos.4 & No.5. In this regard, the Commission observed that “merely because the case resulted in the death of the patient, the liability of negligence cannot be fastened on the doctors; if this trend continued, the doctors may fear to take the complicated cases in future which will be having devastating effects on the health of the People”.
- e) The Commission further held that there was also no violation of the right to informed consent as the facts revealed that consent was clearly obtained in the

proper form. It is the duty of the patient to read the instructions meticulously and to understand its consequences clearly before taking the decision.

- f) As regards Respondent No.1, the Commission held that the principle of vicarious liability could not be attracted primarily because there was no breach of instructions given by the doctors by the staff on duty.
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- 14. Against the order of the National Commission received on 15-07-2017, the present Civil Appeal has been filed by the Appellant (Wife of the deceased) before the Supreme Court of India on 10-08-2017.
  - 15. Prepare the arguments for the case of Padmavathi Vs. Quick Heal Hospital Pvt. Ltd and Others for both sides on the following issues:
    - a) Whether there is any medical negligence constituting deficiency in service on the part of the Respondents under the Consumer Protection Act, 1986?
    - b) Is there any violation of the Right to Informed Consent of the Patient?
    - c) Whether there is any negligence on the part of the Quick Heal Hospital Pvt Ltd? If negligent, will the principle of Vicarious Liability be attracted?
    - d) Is there any violation of the Right to Life of the Patient guaranteed under Article 21 of the Constitution of India.