

## CASE LAW

### Laparoscopic cholecystectomy: a case of medical negligence? [Supreme Court]

Yadav M\*

<b>Case history</b> Cholecystectomy, either open or laparoscopic, is one of the most typical operations performed by the general surgeon, gastrointestinal(G.I)/hepatobiliary (HPB) or laparoscopic surgeon. It is now well-established that laparoscopic cholecystectomy is associated with a two to three times higher risk of bile duct injury (BDI), about 0.5%, than open cholecystectomy. Moreover, BDI during cholecystectomy is a common cause of litigation of medical negligence against the surgeon. The complainant brought a medical negligence action against the surgeon DrGurmit Singh (OP-1), and the OP-3 at DMCH. In our view, OP-1 and OP-3 were not negligent in their duty.	
<b>Court Judgment:</b> Uday Umesh Lalit, J., S. Ravindra Bhat, J., Pamidighantam Sri Narasimha, J. Harnek Singh &Ors. Vs Gurmit Singh &Ors., Civil Appeal Nos. 4126-4127/2022, Arising out of impugned final judgment and order dated 05.06.2020 in AN No.108/2008 05.06.2020 in AN No.120/2008 passed by the National Consumers Disputes Redressal Commission, New Delhi. S.C. Date of Judgment: 19.05.2022. S.C.Accessed from: <a href="https://main.sci.gov.in/supremecourt/2020/16970/16970_2020_4_1502_35968_Judgement_18-May-2022.pdf">URL:https://main.sci.gov.in/supremecourt/2020/16970/16970_2020_4_1502_35968_Judgement_18-May-2022.pdf</a>	
<b>Appellant 1</b> , the complainant, was a retired Semi-Government employee and his wife, Late Mrs Manjit Kaur (Patient), aged 47 years, had been working as a Government Teacher. The patient developed abdominal pain for which an ultrasound examination was done, and it revealed the presence of gall bladder stones. On 13.07.2004, the patient approached R-1, a laparoscopic surgeon at Preet Surgical Centre & Maternity Hospital, R-2. After due examinations and medical tests, Respondent recommended surgery for removing the gall bladder stones and prescribed specific tests to be carried out in advance. [Para 3] The complainant discussed the cause of death and the need for an autopsy with R-3. However, he was told that the patient died due to intraoperative colon and bile duct injuries resulting in Peritonitis, Peritoneal Collection, Septicaemia and Multi-Organ failure. [Para 10] In the above-referred circumstances, the complainant filed a consumer complaint before the SCDRC, Punjab, on 14.02.2005, which was subsequently transferred to State Consumer Commission, U.T. Chandigarh. The complainant prayed for monetary compensation quantified at Rs. 62,85,160 from the Respondents for negligence and deficiency of services. [Para 11] The SCDRC, after considering the evidence and hearing both the parties, allowed the complaint and held R-1 and 2 negligent and exonerated R-3 and 4. R-1 and 2 were directed to pay Rs.1544000 jointly and severally and Rs.10000 as costs. [Para 16] Having considered the matter in detail, S.C. [we] are of the opinion that the interest of justice would be subserved if Respondents 1 and 2 are directed to pay the complainants a total amount of Rs. 2500000 (Rupees Twenty-Five Lakhs only) with interest @ 6% per annum from the date of SCDRC order as compensation.	
Following important issues emerged for discussion in this case:	
<b>Issue of Referral to DMC Hospital, Ludhiana</b> <b>Issue of Cause of Death/ Autopsy</b> <b>Issue of Operative /Post-op Complication</b> <b>Issue of Second Opinion /Expert Opinion</b> <b>Issue of Refusal /Referral to Distant Place</b> <b>Doctrine of Res Ipsa Loquitur</b>	<b>Doctrine of Joint and Several Liability</b> <b>CT Scan Report: Origin of Air/Gas in Abdomen?</b> <b>Role of Punjab State Medical Council/MCI regarding Professional Misconduct</b> <b>Issue of Award of Compensation</b>
<b>Expert Comments:</b> <b>Questions for consideration:</b> Whether the complainant established professional negligence on the part of Respondents as per the standards governing the duty to care of a medical practitioner? <b>Note:</b> The Ethics Committee of MCI considered the matter and held R-1 medically negligent and issued a strict warning to be more careful during the procedure and to be more diligent in treating and monitoring his patients during and after the operation. R-3 was exonerated as no medical negligence was proved against him. [Para 19]. The role of statutory regulatory authorities and the opinion of experts play a significant role in adjudicating a case of medical negligence.	

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### **Expert Comments:**

#### **Questions for consideration:**

- Whether the complainant has established professional negligence on the part of Respondents as per the standards governing the duty to care of a medical practitioner?
- **The Ethics Committee of MCI** considered the matter and held R-1 medically negligent and issued a strict warning to be more careful during the procedure and to be more diligent in treating and monitoring his patients during and after the operation. R-3 was exonerated as no medical negligence was proved against him. [Para 19]
- Role of statutory regulatory authorities and opinion of experts plays a great role in adjudicating a case of medical negligence.