

Interpretation of Medical Negligence under Consumer Laws

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Abstract : Decided cases of medical negligence, mostly are not settled in the lower courts. Majority of them reach up to the apex courts. This is mostly due to different interpretations of the term medical negligence. After studying various cases of medical negligence it is found that in most of the cases the doctors/hospitals are not held liable. There are different interpretations of law concerning medical services. Globally the principles deciding medical negligence are same, viz. Legal duty of care - breach of that duty - direct causation resulting in damages. Since ordinary negligence is not punishable by law, doctors/hospitals have defenses to save themselves from liability. Complaints of negligence come to the courts whose judges mostly are not oriented with medical services or health sciences. Matters of medical negligence are decided on the basic principles of reasonableness and prudence or by relying on the expert's opinion. Deciding reasonableness or prudence is a complex issue in case of medical services. Again expert opinion is also questionable as an expert in case of medical negligence is appointed from the same field and same faculty. There is a chance of favoritism to the doctor/hospital. The concept of vicarious liability is not widely applied to in many of the medical negligence cases. Established cases used as precedents were studied to understand the basic principles in deciding medical negligence. This paper evaluates the present criteria in interpreting medical negligence and concludes with suggesting reforms required to be made in deciding matters of medical negligence under the consumer laws.

Keywords : consumer, doctors, laws, medical negligence

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