

Doctor not criminally liable if patient dies due to error: SC

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Indraprasth, Aug. 5 (PTI) – In a judgment that would relieve the entire medical fraternity, the Supreme Court has ruled that if a patient dies due to an error of judgment committed by the doctor, then he is not criminally liable though could have to pay damages.

This judgment was given by a Bench comprising Justice Y K Sabharwal and Justice D M Dharmadhikari while quashing criminal proceedings against a plastic surgeon who faced trial for criminal charges for causing the death of a person who had wanted to remove a minor deformity in his nose.

The Bench said for fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as could be described as "gross negligence" or "reckless".

"It is not merely lack of necessary care, attention and skill," the Bench said and added "when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal'."

Justice Dharmadhikari, writing for the Bench, said it could be termed 'criminal' only when the medical man exhibited a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence.

"Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it," the apex Court said

"Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable," it added.

Dr Suresh Gupta of Delhi was facing charges under Section 304A of the Indian Penal Code for causing death of the patient. He had conducted an operation to remove a nasal deformity on April 18, 1994 but the patient died the same day.

According to the post-mortem report conducted after three days, the cause of the death was "blockage of respiratory passage by aspirated blood consequent upon surgically incised margin of nasal septum".

>From the post-mortem report and the opinion of the three medical experts of the medical team specially constituted, the case of the prosecution laid against the surgeon was that there was negligence in "not putting a cuffed endo-tracheal tube of proper size" and in a manner so as to prevent aspiration of blood blocking the respiratory passage.

The Bench said the approach of the trial courts in such cases should be such that if a doctor did not give proper or adequate care to the patient, he should be liable for damages.

"This approach of the courts in the matter of fixing criminal liability on doctors, in the course of medical treatment given to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence," the apex Court said.

It said "for every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecution of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large.....".

More at:

<http://www.hinduonnet.com/holnus/001200408051652.htm>

Jai Maharaj

<http://www.mantra.com/jai>

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Hindu Holocaust Museum

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Hindu life, principles, spirituality and philosophy

<http://www.hindu.org>

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The truth about Islam and Muslims

<http://www.flex.com/~jai/satyamevjayate>

The terrorist mission of Jesus stated in the Christian bible:

"Think not that I am come to send peace on earth:
I came not so send peace, but a sword.

"For I am come to set a man at variance against his
father, and the daughter against her mother, and the
daughter in law against her mother in law.

"And a man's foes shall be they of his own
household.

– Matthew 10:34–36.

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