NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI
FIRST APPEAL No. 174 OF 2001
(From the Order dated 09/05/2001 in Appeal/ CD No. 20 OF 1994 of the State Commission, Kerala)

Dr. Sathy M. Pillai
W/o Dr. Madhavan Pillai — Appellant (s)
Samad Hospital
Attingal
Thiruvananthapuram
Kerala

Dr. K.G. Madhavan Pillai
S/o Gopala Pillai
Janaki Mandiram
Behind Municipal Bus Station
Palace Road, Attingal,
Thiruvananthapuram
Kerala

Versus

S. Sharma — Respondent (s)
S/o Sekharan
Thulasi Bhavan
Melathingal Desom
Keezhattingal Village
Chiriyinkil Taluk
Thiruvananthapuram
Kerala

Smt. Rajamma aged 70 years
W/o Dr. Narayanan
Mannachirayil Veedu
Kalarkodi Muri, Paravoor Village
Alappuzha
Kerala

Dr. M.S.C. Bose
Aged 50 years
S/o Rajamma

Director, Stuidents' Affairs
Kerala Univesity
Trivendrum
R/o Sarathy, House No. 2
Santhi Nagar, Sreekaryam
Trivendrum – 695017
Kerala.

Smt. Chandrika
Aged 56 years
D/o Rajamma,
r/o Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey
Kerala State

Sri Lal
S/o Rajamma
r/o Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey
Kerala State

Smt. Lekha
D/o Rajamma
Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey
Kerala State

Smt. Suseela
D/o Rajamma
Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey, Kerala.

Sri Chandrabanu
Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey, Kerala.

Sri Babha Hariraj
S/o Rajamma

Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey, Kerala State

Sri Chandraprabha
S/o Rajamma
Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey, Kerala

Dr. Devaki Rani ……. Proforma Respondent
Samad Hospital
Attingal
Thiruvananthapuram

Pushpavally ……. Proforma Respondent
Samad Hospital
Attingal
R/o Kunnuvilla Veedu
Kappavila
Narayikulam
Kadavoor Village
Thiruvanthapuram
Kerala State.

FIRST APPEAL No. 441 OF 2002

(From the Order dated 09/05/2001 in Appeal/ CD No. 55 OF 1997 of the State Commission, Kerala)

S. Sharma Appellants
S/o Sekharan
Thulasi Bhavan
Melathingal Desom

Keezhattingal Village
Chiriyinkil Taluk
Thiruvananthapuram
Kerala

Smt. Rajamma aged 70 years
W/o Dr. Narayanan
Mannachirayil Veedu

Kalarkodi Muri, Paravoor Village
Alappuzha
Kerala
Dr. M.S.C. Bose
Aged 50 years
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Trivendrum
R/o Sarathy, House No. 2
Santhi Nagar, Sreekaryam
Trivendrum – 695017
Kerala.

Smt. Chandrika
Aged 56 years
D/o Rajamma,
r/o Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey
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Sri Lal
S/o Rajamma
r/o Mannante Chirayil
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Kerala State

Sri Chandrabanu
Mannante Chirayil
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Kerala State

Sri Babha Hariraj
S/o Rajamma
Mannante Chirayil
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Kerala State

Sri Chandraprabha
S/o Rajamma
Mannante Chirayil
Sanathanapuram P.O.
Colourcode, Alleppey
Kerala State

Vs.

Dr. Sathy M. Pillai — Respondents
W/o Dr. Madhavan
Samath Hospital
Attingal

Dr. K.G. Madhavan Pillai
S/o Gopalapillai
Janaki Mandiram
Behind Municipal Bus Station
Palace Road
Attingal

Asst. Surgeon, Kesavapuram
Govt. Hospital Kilimanoor

Dr. Devaki Rani — Proforma Respondent
Samad Hospital
Attingal

Pushpavally, Samad Hospital — Proforma Respondent
Attingal

R/o Kunnuvila Veedu
Kappamvile
Navayikulam
Kadavoor Village
Trivendurm Distt.

BEFORE: HON'BLE MR. JUSTICE K.S. GUPTA, PRESIDING MEMBER
HON'BLE DR P D SHENOY, MEMBER.

For the Appellant : Shri M.S. Ganesh, Sr. Advocate

In FA No. 174 of 2001 Shri B.V. Deepak, Advocate
Shri TVS Raghavendra, Advocate
For the Respondent : Mrs. Lakshmi Jayashanker, Advocate
In FA No. 174 of 2001

For the Appellant : Mrs. Lakshmi Jayashanker, Advocate
In FA No. 441 of 2002

For the Respondent :Shri M.S. Ganesh, Sr. Advocate
In FA No. 441 of 2002 Shri B.V. Deepak, Advocate
Shri TVS Raghavendra, Advocate

Dated the 10th August, 2007.

ORDER

DR P D SHENOY, MEMBER

The issue involved in this case falls in a narrow matrix. An 25 years young lady who went to Samath Hospital for encirclement of the cervix by making sutures at the mouth of uterus to retain the pregnancy and prevent miscarriage died in the same hospital within

24 hours of the procedure. Is it due to medical negligence?
A detailed analysis of the case gives the answer.

The case of the complainant in Brief

Mrs. Chandrakala, aged 25 years wife, of the first complainant and the daughter of the second complainant approached Dr. Sathy M. Pillai at Samath Hospital, Attingal, Thiruvananthapuram District to protect her pregnancy and on her advice was admitted to the hospital on 24.5.96 on payment of Rs. 50,000/- as fees. Chandrakala was married on 14.4.1993 and had a miscarriage in December 1993. Dr.Sathy M. Pillai the first Opposite Party (here in after to be referred to as O.P. 1) advised sutures to be made at the mouth of the uterus to retain the pregnancy and prevent miscarriage. At 6 a.m. on 23.5.1996 she walked into the operation theatre. The complainants and relatives were waiting outside the operation theatre and about 6 p.m. second complainant Dr. Narayanan was allowed to see Chandrakala who complained that she could not bear the pain due to the sutures. At 10 p.m. the complainants were informed that Chandrakala vomited and wanted clothings and so 2 nighties were given by them. Second complainant was declined permission to see Chandrakala. At midnight when the complainants heard loud cries of Chandrakala, they

agitated and wanted to see her. The second complainant was permitted to do so, who saw her lying nude pressed to the floor by the first opposite party and three staff of the hospital. Dr. Ajaykumar, relative of the first complainant who was brought to the hospital was not permitted to see her stating that she was mentally upset. RW6, the Psychiatrist was brought to the hospital who found Chandrakala was under sedation. Later on they were informed that she has expired.

Dr. K. Sreekumari conducted the post mortem in the medical college hospital, Thiruvanthapuram and opined that the death was due to shock following spinal anaesthesia. The patient was 4 months' pregnant at the time of her death and had to undergo pain, suffering, anxiety and mental agony. Opposite parties never exercised proper care as expected of them. Second opposite party Dr. K.G. Madhavan Pillai, a skin specialist administered anaesthesia though he was not qualified to do so. She was also given overdose of sedation in addition to spinal anaesthesia. Complainants stated that they have spent Rs. 1 lakh for the treatment of Chandrakala. A criminal case was registered by the first complainant in which investigation is in progress. First complainant who was making all arrangements to take her and her child to the gulf countries has lost her

company and care. Complainant sought directions to the opposite parties to pay Rs. 15 lakhs as compensation.

Case of the Opposite Parties :

The first opposite party contended that Dr. Sathy M. Pillai is the Proprietor of Samath hospital and the second opposite party is on leave and 3 & 4 opposite parties are the employees of the hospital. It is a 25 bedded hospital having modern facilities. First O.P. is a qualified Gynaecologist. Chandrakala has been visiting the hospital regularly. **The patient and her relatives were at all times informed of the possible risks from surgery, anaesthesia etc. and 'informed consent' was obtained on eight different occasions.** The patient was physically fit for surgery. On 23.5.96 she was taken to the pre-operation room at 8 a.m., as **10 cases were posted for surgery on that day, she could be operated upon only at 5.30 p.m. and brought to the post-operative room at 6 p.m.** The near relatives of the patient were permitted to see her at 6 p.m. She was fed at 8.30 p.m. The allegations that she was nude etc., were denied. She woke up at 10 p.m. and vomited – this was on account of pregnancy. Later on she slept. Suddenly she woke up at 1 a.m. and started shouting. She was behaving abnormally. The doctors and staff had

to restrain her on the mattress on the floor. Sedation was given due to abnormal behaviour but her vital signs were normal. Dr.Ajaykumar met Dr.Sathy who explained the condition of the patient accordingly, he did not express any desire to see the patient. Dr.Surajmoni, a practicing anaesthetist was brought to see the patient who diagnosed her condition to be of acute excitement and prescribed medicine. **At about 11 a.m. B.P. and her pulse rate rose hence, was intubated and oxygen was administered to her. The anaesthetist and physician were summoned but B.P. and pulse rate could not be detected.** The efforts to revive her did not succeed. The conclusion of Dr.Sreekumari who conducted the autopsy that the death was due to shock as a result of spinal anaesthesia is wrong. Dr. Madhavan Pillai (OP 2) who had undergone training in anaesthesia in Medical College Hospital Thiruvananthapuram, denying overdose of anaesthesia has stated that there was an attempt to give spinal anaesthesia which was given up as spinal fluid could not be obtained. Accordingly, Dr.Sathy herself administered local anaesthesia in the presence of Dr. Madhavan Pillai. They denied the allegation that the death of Chandrakala was due to any negligence on the part of the opposite parties.

The decision of the State Commission :

The State Commission after going through the records of the case and the evidence adduced by both the parties and the extracts of the medical text relating to the case came to the conclusion that OPs No. 1 & 2 were negligent in the performance of their duty and directed them to pay Rs. 3 lakhs to the complainant towards compensation within 3 months of the date of receipt of the orders failing which they would have to pay 12% interest from that day. They were also directed to pay Rs. 3000 as costs.

Aggrieved and dissatisfied by the order of the State Commission in complaint No. 55/97 decided on 9.5.2001 holding them negligent the opposite parties 1 & 2 both doctors have filed this appeal No. 174 of 2001.

Submission of the Learned Senior Counsel for the Appellants 1 & 2 :

Ld Senior Counsel submitted that the issue of alleged negligence in this case was referred to the District Level Committee and finally to the State Level Committee. This Apex Body meeting convened on 25.4.2006 in the Chamber of the Director of Health Services to discuss the case in CR No. 135/96 under Section 174 Cr.P.C. observed that

"the terminal complications that developed later leading on

to the death of the patient were managed according to the standard protocols. The death cannot be attributed directly to the surgical or the anaesthetic procedure. Hence there does not seem to be any negligence on the part of the treating doctors."

Ld. Sr. Counsel quoted an extract of the post mortem report dt. 5.5.1996

"Needle puncture marks on the back of right hand, left wrist, in front of left side of chest and on the lumbar regions at the back. The needle track in the lower lumbar region was seen extending upto the inter-vertebral space with oedema of tissues around.

"Viscera including uterus with placenta, blood and skin from injection sites preserved and sent for chemical analysis. Bits of tissues presented for histopathological examination.

OPINION AS TO THE CAUSE OF DEATH

Reserved pending report of laboratory investigations.

This report is signed by (a) Dr. K. Sasikala, Lecturer in Forensic Medicine and Police Surgeon, Medical College, Trivendrum; (b) Dr. K. Sreekumari, Assistant Professor & Deputy Police Surgeon, Medical College,

Trivendrum; and forwarded to the police by (c)Director and Professor & Police Surgeon, Director, State Medico-legal Institute.

He also quoted from the final post mortem certificate dt. 2.8.96

CISTOPATHOLOGICAL EXAMINATION

"Section from liver shows congestion and heart appears normal. Section from lung shows pulmonary oedema and congested vessels. Section from spleen shows congestion. Section from kidney shows normal glomeruli, tubules show necrosis of the lining epithelium, inter-sitibum shows oedema. Section from brain shows oedema."

Based on the post-mortem findings and results of laboratory examinations Dr. Sreekumari opined that post-mortem findings are consistent with death due to shock following spinal anaesthesia. In her cross examination she has stated that *"The opinion above has been furnished based on the presence of the needle puncture mark on the lumbar region which is the track of spinal anaesthesia. And the changes in the kidneys noticed on histo-pathological examination. Changes in the*

kidneys are consistent with shock which is an accepted complication of spinal anaesthesia. The oedema in the brain could have been the result of the shock.

There was oedema of the tissues around the needle track in the lower lumbar region upto the intervertebral space. This oedema is the reaction of the tissue to the injection. Oedema need not necessarily be present in all cases but it could be there."

The ld Sr. counsel quoted detailed extracts from cross examination of Dr. Sreekumari in trying to prove the point that there are loopholes in her evidence.

Ld. Sr. Counsel quoted the order of the Government of Kerala dt.4.9.1984 which had issued an order based on guidelines for post mortem examination prepared by Dr. V.K. Jayapalan, Director and Professor of Forensic Medicine, Medical College in consultation with other professors for compliance.

Ld. Counsel quoted certain extracts from these guidelines meant for medico-legal post mortem examination

> "*The dura is examined for tear; extradural haemorrhage, if present, is measured and described.*
> *Subdural and subarachnoid spaces are examined for collection of blood/pus."*

"Spinal cord is exposed and examined for evidence of injuries and disease in cases where the above are suspected.
No internal organ is left undissected and unexamined."

Ld. Senior Counsel stated that the doctor who had conducted the post mortem had not followed the above guidelines.

Ld. Counsel drew our attention to the case sheet of the hospital dt. 23.5.96 - cervical encirclage under local anaesthesia.

He also pointed out the deposition of Dr. V. Mahadevan, Director and Professor of Anaesthesia, Medical College, Thiruvananthapuram to show that Dr. Madhavan Pillai had undergone intensive training course for 3 months in anaesthesia as he was deputed by the Government with full pay and the purpose to overcome the shortage of anaesthetists and after training they would be posted into the Taluk and District hospitals. **They are permitted to administer anaesthesia for simple and straight forward cases. Cervical Encirclage is a simple straightforward operation.**

Ld Counsel also drew our attention to the cross examination of the V. Mahadevan

A. *What is spinal shock ?*

A. *It is a complication occurring immediately after giving a spinal anaesthesia within 15 minutes. It is sudden in onset characterized by slowing of heart rate, sudden fall in blood pressure. The patient can become unconscious and go on to a cardiac arrest unless immediately treated. Spinal shock will not occur as a late phenomena.*

(Q) In the case of a suspected death after spinal anaesthesia is it necessary to examine the C.S.F. fluid?

(A) Yes. I think it is because the drug is injected to the CSF and when it is absorbed to the liver, it is also to be examined.

(Q) Am I correct to say that the doctor who conducted the autopsy of the patient or who treated the patient is the competent person to say the cause of death of that patient?

(A) By both.

Cervical encirclage is only suturing on the mouth of cervix. Cervical encirclage is not an emergency case but an elective case .

If the first attempt fails. Once or twice it can be repeated.

A. ***There is no mention of spinal anaesthesia in the case sheet?***

A. ***No. It is not mentioned.***

A. ***There is no mention of the doctor who gave or attempted to give spinal anaesthesia?***

(A) No.

In cross examination Dr. Sathy M. Pillai has submitted that "*I have treated the deceased Mrs. Chandrakala of this case from 14.5.95 she was treated by me. She informed me the previous history of her pregnancy. She was an out patient. She was admitted on five or six occasions before her last admission. The last admission was on 25.4.96. In the case of this patient I have obtained consent letters for several times.*

(Q) That is on 21.2.96, 15.3.1996, 21.4.1996 and 25.4.1996. Is it correct?

(A) Yes. It is correct.

(Q) You did the cervical encirclage on 23.5.96?

(A) Yes.

(Q) Can you show from the case sheet that consent was obtained for that ?

(A) The consent was obtained at the date of her last admission for surgery and anaesthesia. As it was explained to the patient that the surgery may like to be done as an emergency. I obtained the consent on 25.4.96 and an additional consent was obtained on 22.5.96 the day before surgery for blood transfusion in case the need arose.

A. *Even though you obtained a consent letter on 25.4.96 you have done the surgical encirclage after a month?*

A. *Yes. She had already given a consent letter on 25.4.96 and she was in the hospital I got an additional consent letter on 22.5.96 for*

blood transfusion that consent letter was obtained from the relative/ relationship is noted as mother.

A. ***By surgical encirclage will not cause death?***

A. ***It is unlikely cause to death.***

A. *No risk is expected while putting the sutures in ordinary course.*

A. *Any surgical procedure is associated with a small percentage of risk. This operation also has a similar risk.*

A. *There was no other diseases of her*

A. *She was apparently healthy except for the pregnancy related complaints.*

A. *From 6 A.M. to 5.30 P.M. she was in the operation theatre?*

A. *No she came at 8 A.M. from 8 A.M. to 5.30 P.M. she was in the operation theatre.*

The Ld. Sr. Counsel for the appellant quoted an extract from the judgment of Mr. Justice K.P. Balakrishnan dt. 31.3.2005 delivered by the High Court of Kerala :

"Contention of the public prosecutor is that the burden to explain the cause of the death in the circumstances of the case is also on the petitioners/accused as they are the only persons who are aware as to what transpired within the operation theatre where others had no access and how could it be said that there was no negligence on their part in

administering treatment to the patient who breathed her last at this hospital. The postmortem finding is that the patient died of shock due to spinal anaesthesia. *Considering the allegations in the complaint; Annexure-V report and Annexure – VI minutes respectively of the Medical Board and the Apex Body, produced in Criminal M.C. 3682 of 2001, it cannot be stated that the allegation in the first information report, if taken at their face value do not prima facie constitute offences alleged in the complaint or do not disclose ingredients of cognizable offences as alleged."*

"H*ere, in the instant case no mandatory statutory provision is violated in the investigation and the defect in investigation if any does not affect the competence and jurisdiction of the trial. But that will not prevent the Court from directing the police to file further report, or police filing further report. In the circumstances of this case it is felt that the Investigation Officer has to be directed to conduct further investigation and submit final report afresh under Section 173 (8) Criminal P.C. in C.C. 258 of 2001 on the file of the judicial First Class Magistrate's Court – 1 Attingal, registered on Annexure – II final report. So then the proceedings in C.P. 1 of 2001 pending before the same court on the basis of Annexure-III complaint in Criminal M.C. 1138 of 2001) deserve to be stayed adopting the procedure prescribed in Section 210 Cr. P.C.*

In the circumstances the investigating officer who submitted Annexure – II

final report shall conduct further investigation in the case getting a fresh report from the Apex Body in view of the direction communicated to the first petitioner vide Annexure – VII letter produced in Criminal M.C. 3682 of 2001. The Apex Body shall be convened with notice to the first petitioner and report in the matter shall be furnished to Investigation Officer within three months from the date of receipt of a copy of this order by the Director of Health Services".

He further submitted that to the best of the knowledge of the appellants, the investigating agency is yet to file further report as directed by the Hon'ble High Court vide Annexure P-IV order.

Dr. V. Kanthaswamy who had earlier worked as Professor in Forensic Medicine, Head of Department in Trivendrum Medical College in his cross examination has stated that (Q) "*if there was oedema of the brain severe enough to cause death, how should it be indicated in the post-mortem report? (A) Oedema of the brain can occur in many many occasions as a terminal event associated with shock, anoxia etc. as a consequence of may diseases, injuries and poisoning case. If the oedema of the brain is very severe the brain stem will be expected to show evidence of corning (termination) which means a displacement of the mid brain from the original site. A corning will be indicated by*

a circular groove on the brain stem. This is not seen recorded in the post-mortem report. ***(Q) In this case do you find any obvious and reliable cause for death? (A) No. (Q) It is always the doctor who directly conduct the autopsy is the better person tosay directly that what was seen or done by her/him than a person who sees the document of post-mortem? (A) This is absolutely correct as far as post-mortem findings which are observed and recorded concerned, because experts does not observe such facts. As far as opinion is concerned, it is not so because opinion is an inference or conclusion.*** *(Q) In above circumstances CSF need not be taken? (A) I do not agree with the logic behind the decision not to take CSF at the time of post-mortem because a Forensic Pathologist conducting the post-mortem cannot foresee what would be the result in lines and blood and the decision not to take CSF is not sound.*

The allegation of the complainants is that there was shock after administering of spinal anaesthesia. In this connection it is advisable to look into the deposition of Dr. V. Soorajmani : anaesthetist who has examined her on 23.5.96 night and if there is any excitement he has prescribed medicine including Larpose. In his cross examination he has stated that the patient was not in shock.

The Ld. Counsel quoted an extract from the text by Dr. Parikh, Medico-legal Consultant & Former Honorary Professor of Forensic

Medicine and Toxicology (Bombay University) as follows :

a. Sudden deaths must be studied from the perspective of disordered physiology as well as from the standpoint of morbid anatomy.

b. Death must thus be viewed as having resulted from cessation of physiologic function rather than purely as a consequence of an anatomic state.

c. Victims of sudden and unexpected natural death fall into several deferent categories with respect of the degree of certainty with which the cause of death can be established.

d. Many non-medical persons believe that the cause of death is always revealed by autopsy, the pathologist may be pressed into making positive or dogmatic statements despite the absence of sound objective data to support his opinion. In such instances he should admit his inability to comply with what appears to be a perfectly reasonable request.

e. Deaths whose causation remains unexplained after complete anatomic and other laboratory studies make up a small percentage of the forensic pathologist's case load. They are examples of functional failure of a vital tissue or an organ without corresponding or recognizable structural abnormality.

Ld. Counsel for the appellant quoted Vinita Ashok Vs Laxmi Hospital judgment in 2003, Volume II, CPJ Pages 62 to 66 – para 15 and 16 wherein it was held that :

"On the first allegation of negligence, it is argued by the complainant that certain tests were a sine-qua-non before surgery done on him. We have two problems in accepting the contention. No expert opinion or medical literature has been produced before us in support of this contention especially when this contention has been rebutted by the evidence of the opposite parties that pre-operative tests were duly conducted on the complainant. It is submitted that there is no thumb rule as to what tests ought to be conducted in every situation and the same is left to the clinical assessment of the doctors. On the medical record produced by opposite party Nos. 1 and 2, we see certain tests were carried out in the path-lab and the material is on record, hence, it cannot be disputed that certain tests were carried out before first surgery. Whether those tests brought out by the complainant in his rejoinder are a must are not bore out by any material on the subject. Hence, we see no merit in this argument of the complainant."

Submissions of the Learned Advocate for the Respondent :

Respondent was the complainant before the State Commission

Learned Counsel referred to the treatment regarding Cervical encirclage done under local anaesthesia. He argued that the patient was to

be on IV fluids and after the final anaesthesia the patient survived for some more hours but the clinical records which are not signed shows that Cervical Encirclage done under local anaesthesia.

Dr. Kantaswamy has clearly mentioned in his cross examination that death can occur after many hours not necessarily immediately after administration of spinal anaesthesia though shock can take place immediately.

Dr. Kantaswamy in his cross examination has stated as follows :

(Q) The qualifications of Dr. Sreekumari and Dr. Sasikala is there in Ext. P3?

A. *Yes*

A. ***You agree that Dr. Sreekumari is qualified to do the autopsy?***

A. ***Yes, of course. Dr. Sasikala has basic qualification.***

Further Dr. Kantaswamy in his cross examination stated as follows :

A. ***It is always the doctor who directly conduct the autopsy and, is the better person to say directly that what was seen or done by her/him than a person who sees the document of post-mortem?***

A. ***This is absolutely correct as far as post-mortem findings which are observed and recorded concerned, because experts does not observe such facts. As far as opinion is concerned, it is not so because opinion is an inference or conclusion.***

A. ***Do you agree with me when I say that a pathologist is competent to say whether the charges are ante-mortem or post-mortem?***

A. ***Yes.***

A. ***Oedema is only a feature of ante-mortem?***

A. ***Yes.***

Dr. V. Suraraj Mani, Civil Surgeon Psychiatrist has said in his cross examination that he saw the patient. He could not interview her because she was not in a state for psychiatric evaluation. He has stated in his cross examination that the patient was sedated. I would not prescribe sedatives to be given to her if I suspect that she was in shock. But she was not in shock because the B.P. was normal. Further, he said in cross examination

A. ***Were you told that the patient had undergone a cervical encirclage?***

(A) I didn't examine her.

The Ld. Counsel for the complainant argued that though he had not examined her he still says that she was not in shock so his testimony loses value as he cannot give any opinion without examining the patient.

Ld. Counsel referred to the Post-mortem Certificate dated 25.9.96 issued by Dr. K. Sreekumari and Dr. K. Sasikala wherein it is clearly mentioned as follows :

> "Needle puncture marks on the back of right hand, left wrist, front of left side of chest and on the lumbar region at the back. The needle track in the lower lumbar region was seen extending upto the intervertebral space with oedema of tissues around".

Ld. Counsel argued that it is clear from the final report of post-mortem

Section from brain shows oedema.

Opinion : Postmortem findings are consistent with death due to shock following spinal anaesthesia."

This was signed by Dr. K. Sasikala and Dr. K. Sreekumari.

Ld. Counsel quoted cross examination of Dr. Sreekumari

A. *I put it to you that your conclusion of shock is not supported by the histo-pathological report?*

A. *It is based on the gross and microscopic appearances*

A. *In this particular case have you noticed any specific signs relating to the cause of death?*

A. *Needle puncture marks were seen in the lower lumbar region extending into the inter-vertebral space with oedema of tissues around. Brain was congested, oedematus and softened. Lungs were congested and oedematus. There was evidence of surgery done on the uterus. ON histopathological examination there was necrosis on the living of tubules with interstitial oedema. Brain also shows oedema. Based on the above findings I have arrived at the conclusion considering all aspects together.*

FINDINGS :

In this case the deceased was brought to the hospital for a simple procedure called encirclement of the cervix by making sutures at the mouth of uterus to retain the pregnancy and prevent miscarriage, died in the same hospital within 24 hours of the procedure.

The relatives of the patient were present in the hospital throughout and the doctor in the hospital could not give proper explanation for the

untimely death and the doctors claimed that they had only given local anaesthesia, and spinal anaesthesia was only attempted, not given. The evidence of the relatives, who had gone to see the patient after the surgery, cannot be easily brushed away.

(1) **Informed Consent : A perusal of the eight consent forms which are basically in Malayalam shows that Samad Hospital had obtained consent from the patient and the relatives mentioning that surgery will be performed under Anaesthesia. These are all printed forms wherein certain English words like "Blood Transfusion, Ultra Sound Scan" are mentioned, but there is no specific mention about the name of the surgery viz. cervical encirclage and the type of anaesthesia namely spinal anaesthesia/local anaesthesia. Signatures were taken from the patient/relatives in a mechanical fashion on some of these forms much in advance of the date scheduled for surgery. Hence, these forms cannot be considered by any stretch of imagination that there was informed consent.**

(2) As per the case of the opposite parties the patient was taken to the pre-operation room at 8 a.m. and was operated upon only at 5.30

p.m. which means the gynaecologist has performed 9 surgeries as admitted by her. One can imagine clearly from this, the doctor would have been tired by that time she started to perform the 10th operation.

(3) The case record does not show clearly who has suggested spinal anaesthesia and who had administered spinal anaesthesia if it has failed. Sequential contemporaneous record is missing. The State Commission has pointed out this lacuna. In Exbt. R -3 which mentioned about the entry “encirclage L/A (failed S/A) “what is to be noted is there is over writing in L/A itself. L is seen written on S, then in brackets it is stated “(S/A failed)”. Serious attack was made by complainants against Exbt. R 3. The first inconsistency pointed out by the learned counsel for the complainant is, in Exbt R2 there is no statement that “S/A” failed. As has indicated early, what is stated is cervical encirclage done under L/A. Normally every treatment given to the patient should find a place in the case sheet.”

(4) The State Commission further mentions that all along Exbt. R 3 was in the custody of the opposite party and these documents were given only after 11.7.1996 because Exbt. R3 contains entries up to 11.7.96 which means this register was in the possession of the

opposite parties long after the post mortem which gives scope for tampering of the records.

5) Dr. Madhavan Pillai, the husband of the gynaecologist was only trained for three months in giving anaesthesia. The purpose of the training was to reduce the shortage of anaesthetists in government hospitals and it was not meant to reduce the shortage of anaesthetists in private hospitals.

Dr. Madhavan Pillai claimed that he was on leave while trying to administer spinal anaesthesia. During the last date of hearing on 11.1.2007 we had directed the Ld. Counsel for the appellant to produce a copy of the order permitting appellant No. 2 Dr.Madhavan Pillai to do private practice. This has not yet been submitted us. Instead of filing the Government order permitting him to do private practice he has filed an affidavit stating as follows :

I, Dr. K.G. Madhavan Pillai, son of Sri Gopala Pillai Hindu, male, aged 56, residing at Attingal, Thiruvananthapuram Kerala, do solemnly affirm and state as follows :

1. I am the 2nd Appellant. I am aware of the facts. I am authorized to swear this affidavit on behalf of the 1st Appellant herein also.
2. During the course of hearing of this Appeal, the question whether, a doctor in the service of the Government of Kerala, could work in a Hospital, while on leave arose.
3. I am submitting herewith, the copies of the relevant rules, forming

appendix XII-A to the Kerala Service Rules, dealing with “Rules for the Grant of Leave Without Allowance for taking up Employment Abroad or Within India”. These Rules, are applicable, to all government servants under the Government of Kerala and taking up employment, either in India or abroad, by such a Government Servant on leave, is contemplated. Rule 1 specifically refers to “highly qualified doctors, engineers, etc, taking up employment abroad or within India”. The copy of the said Rules may be marked as Exhibit A1.

4. I have now retired on superannuation. All papers relating to grant of leave to me, while in service, have been submitted by me, to the Director of Health Services, Kerala, in connection with finalization of and sanction of my pension. The matter is till pending with Government.

This clearly shows he has not filed copy of the Government order permitting him to do private practice. He has not even filed an order granting him leave without allowance. He has stated that all papers relating to grant of leave to him, while in service, have been submitted by him to the Director of Health Services for finalizing sanction of his pension. This is unbelievable as Government has all records relating to sanction of leave in the service register itself. Further, he could have filed a photocopy of that.

Dr. Madhavan Pillai has submitted copies of pages 63, 66, 67 and cover page of, Atlas of Infertility Surgery by Grant W Patten Jr. & Robert W. Kistner. At page 67, the authors state “Cervical Circlage

– Temporary. The procedure may be done under light general, low spinal, or epidural anaesthetic".

He has also submitted copies of the cover page and page 459 of Text Book Anaesthesia by A.R. Aitkenhead & G. Smith, where at Chapter 26 dealing with "Local Anaesthetic Techniques" where the features of local anaesthesia, are explained.

The case sheet does not reveal in clear cut terms that Dr.Madhavan Pillai tried to administer spinal anaesthesia and he failed. His name is not there and for how long he tried is also not mentioned. It is clear that when the patient went into shock he was not there. The extracts of the texts produced by him indicates that cervical encirclage can also be performed by local anaesthesia. If that is so, knowing fully well that he was trained only for a short period of three months, why he attempted spinal anaesthesia has not been answered by him. Secondly, if he had failed in giving spinal anaesthesia why did he ask his wife to give local anaesthesia even though he claims to have been trained?

Dr. V. Mahadevan, Director and Professor of Anaesthesia, Medical College, Thiruvananthapuram in his deposition has stated that

those who had undergone three months' training in anaesthesia are permitted to administer anaesthesia for simple and straightforward cases. If so, the question why Dr.Madhavan Pillai ventured to give spinal anaesthesia when he himself has produced records that this procedure can be conducted under local anaesthesia, remains unanswered.

(6) In connection with the pending criminal case, the Apex body meeting was held in the chamber of Director of Health Services. They only say that they discussed the case in CR No. 135/96 under Section 174 Cr.P.C. (Section 174 Cr.P.C. relates to police to inquire and report on suicide etc.), which means the Committee was to examine the case to determine whether there was negligence of a criminal nature on the part of the treating doctors. This case was not referred to them by the consumer fora to look into the aspect of medical negligence under the Consumer Protection Act. These two types of negligence are distinguishable.

None of the signatories of this Apex body have filed any affidavit or hence could not be cross examined. The appellants have not filed any application to file affidavits by one of them before us. Its

members have also neither heard the complainant nor the doctor who performed the post mortem. Hence, much reliance cannot be placed on the conclusions drawn by the Apex Committee.

(7) The Ld. Sr. Counsel for the appellant quoted in extenso judgment of the single judge Bench of High Court of Kerala. In the concluding para it is stated that the investigating officer shall do the needful in the matter; shall complete further investigation in the case and shall submit final report within six months from the date of receipt of the copy of this order. The public prosecutor shall forthwith give appropriate directions to the officers in the departments concerned to avoid any further avoidable delay in the further investigation of the case which is almost 9 years old by now."

It was submitted during the course of hearing that further report is yet to be filed by the investigating agency.

Though High Court has asked the investigating agency to file further report, it is worthwhile to look into certain observations made by Mr. Justice K.P. Balakrishnan dt. 31.3.2005 delivered by the High Court of Kerala :

"On hearing elaborate arguments of the counsel for the petitioners,

the first respondent in Criminal M.C. 1138 of 2001 and the Public Prosecutor and on perusing the records of the case made available, I am unable to accept the contention of the petitioners that no wanton act or omission which can be categorized as criminal negligence is made out for the petitioners being tried for offences under section 304 or 304 A and that therefore, both the private complaint and the final report are liable to be quashed allowing both Criminal M.Cs. The allegation and the records made available in the case show prima facie that a case of criminal negligence stands made out which if proved by evidence would warrant conviction of the petitioners for the offences alleged.

(8) Dr. K. Sasikala Lecturer and Assistant Police Surgeon, Department of Forensic Medicine, Medical College, Thiruvanathapuram and Dr.K.Sreekumari, Asstt. Professor & Dy. Police Surgeon, Medical College, Trivandrum have conducted the post-mortem. They have filed affidavits and they have cross examined by the Ld. Counsel for the opposite parties and they have categorically stated in their post-mortem report that death was due to shock following spinal anaesthesia. They are independent witnesses and their post-

mortem certificate is a contemporaneous record and they have no grudge or ill will against the hospital or the doctors who administered anaesthesia or performed surgery. They have withstood the laborious cross examination. Their views have been affirmed, their qualifications and expertise were not questioned by other doctors like Prof. Mahadevan, Head of the Department (Retd.) Hence, we have no reason to disbelieve their evidence.

(9) Dr. Soorajmani in his examination has stated that the patient was not in shock but in his cross examination he has admitted that he did not examine the patient so his testimony loses value as he cannot give any opinion without examining the patient.

(10) There was poor post-operative care. It is clear from the records that several complications arose and patient was writhing in pain and agony after operation. Even then they did not summon any expert doctor for several hours after the operation from 6 p.m. till half an hour before the death. Nor did they suggest that she may be taken to another hospital for better management. Anaesthetist and physician were called only at 11.30 a.m. and the patient died at 12 noon. Samath hospital is located in Attingal which is very close to

Thiruvananthapuram. If they could have not managed the case they should have referred the case to Thiruvananthapuram, where there are many excellent hospitals, which they have not done. Though Dr. Ajay Kumar had come to see the patient at the instance of the complainant according to the complainant, he was not allowed to see the patient. It is the contention of the opposite party that when the condition of the patient was explained to him he did not express any desire to see the patient. This is not believable.

(11) Dr. V. Mahadevan, Director and Professor of Anaesthesia, Medical College, Thiruvananthapuram produced by the respondent doctors in his cross examination has stated that the doctor who conducted autopsy of the patient or who treated the patient is competent person to say the cause of the death of the patient. He has also opined in his cross examination that there is neither a mention of spinal anaesthesia nor a mention of name of the doctor who administered spinal anaesthesia in the case sheet. Why Dr. Madhavan Pillai did not record this information? The case sheet points the needle of suspicion towards Dr. Madhavan Pillai. Further, Dr. Sathy M. Pillai herself in her cross examination has admitted “that surgery for

encirclement of the cervix is unlikely to cause death. However, any surgical procedure is associated with the small percentage of risk" and that "the patient was not having any other diseases and apparently healthy, except for the pregnancy related complaints."

(12) Dr. Kantaswamy produced as a witness from the side of the opposite parties agrees that Dr. Sreekumari and Dr. Sasikala are qualified to do autopsy. He has also admitted that the doctor who directly conducted autopsy is the better person to judge than a person who sees the document of post mortem. He also admitted that oedema is only a feature of ante mortem and in the post mortem examination oedema of the brain was found. Hence, the cross examination of the witnesses of the opposite parties also could not dislodge the testimony of Dr. Sreekumari that death was due to shock as a result of spinal anaesthesia.

(13) Cause of death : Though the doctors who have performed post mortem have clearly stated that the cause of death was due to the result of spinal anaesthesia the treating doctors have failed to explain the cause of death stating that even today they could not determine the same and state that it could be an act of God.

(14) The Apex Court in Spring Meadows Hospital and Another versus Harjol Ahluwalia through K S Ahluwalia and Anothers { (1998) 4 Supreme Court Cases 39 } has held that :

Gross medical mistake will always result in a finding of negligence. Use of wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of res ipsa loquitur can be applied.

Ratio of this case to a great extent applies to the case under consideration.

Having perused order of the State Commission and records in this case and having heard the learned counsel for the parties at length, we are not persuaded to interfere with the detailed and well reasoned order of the State Commission so far it pertains to medical negligence. Hence, the appeal filed by the doctors in first appeal No.174/2001 is dismissed.

Smt. Sunita Sharma and Smt Rajamma have filed an appeal (FA No. 441 of 2002) against the State Commission's order for enhancement of compensation. The compensation awarded in this case is only Rs. 3 lakhs. In their complaint they have asked for Rs. 15 lakhs. There is a loss of life of Chandrakala at the age of 21 and also life of unborn baby in her womb. The complainant is the husband of the deceased and a post graduate. The deceased Chandrakala would have lived her life 70

years compared to life span of her parents. The other complainant is mother of the deceased, who has lost her loving daughter who would have taken care of her at the old age. Considering all these facts we direct that compensation should be enhanced to Rs. 6 lakhs with 10% interest from three months of the order of the State Commission till the date of payment. The complainants also are entitled to costs which we fix at Rs. 50,000. Appeal is disposed off in above terms.

We place on record the sincere efforts by Dr. M.S. Ganesh, Senior Advocate and Mr. Deepak, Advocate for the doctors and Mrs.Lakshmi Jayashankar, Advocate for the complainants for their detailed analysis of the case.

…….J
[K S Gupta]
Presiding Member

…….
[P D Shenoy]
Member

Rajani