NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 441 OF 2012

(Against the Order dated 14/05/2012 in Complaint No. 7/2006 of the State Commission Kerala)

1. P. MURUGAN & 2 ORS.
S/o. Podiyan Acjari, R/o. Manjusha, District Court Ward,
Thathampally. P.O.,
ALAPPUZHA,
KERALA
2. M. VIJAYA SHANKAR (MINOR)
S/o. P.Murugan, R/o. Manjusha, District Court Ward,
Thathampally. P.O.,
ALAPPUZHA
KERALA
3. M. ABIRAMI
D/o. Late Manju, R/o. Manjusha, District- Court Ward,
Thathampally.P.O,
ALAPPUZHA, KERALA .....Appellant(s)

Versus

1. SAHRUDAYA HOSPITAL & 4 ORS.
Thathampally. P.O.,
ALAPPUZHA-688013
KERALA
2. DR. ABRAHAM THYYIL
Thathampally. P.O.,
ALAPPUZHA-688013
KERALA
3. DR. ROSAMMA PUTHENPURAYIL
Obstertrics and Gynaecology Department, Sahrudaya Hospital,
Thatampally. P.O.,
ALAPPUZHA-688013
KERALA
4. DR. THRESSIAMMA PUTHENPURAYIL,
Anaesthetist, Sahrudaya Hospital, Thathampally. P.O.
ALAPPUZHA-688013
KERALA
5. DR. HGDE, GENERAL PHYSICIAN
Sahrudaya Hospital, Thathampally.P.O.,
ALAPPUZHA-688013
KERALA .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER

FOR THE APPELLANT : MR DILEEP POOLAKKOT, ADVOCATE AND
MR SHIVAM SAI, ADVOCATE

FOR THE RESPONDENT : MR SHEJI P ABRAHAM, ADVOCATE

Dated : 18 March 2024

ORDER

PER MR SUBHASH CHANDRA

1. This Appeal under section 19 of the Consumer Protection Act, 1986 (for short "the Act") challenges the order dated 14.05.2012 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (in short "the State Commission") in Complaint No.7 of 2006 dismissing the complaint alleging medical negligence.

2. The brief facts of the case are that appellant no.1's wife, Manju (deceased), was admitted on 20.05.2004 for her second delivery in the respondent no.1/ hospital as an inpatient. The hospital conducted a detailed check-up of the deceased on 21.05.2004 and found that the deceased was healthy and decided to conduct a caesarean operation after going through all the previous medical records of the deceased. The caesarean operation was conducted on 22.05.2004 at around 12.50 pm using spinal anaesthesia and appellant no.3 was born around 01.03 p m. Appellant alleges that during the caesarean operation neither the general surgeon nor a senior gynaecologist were present. After the operation, appellant no.1 informed that the deceased was not feeling well and was having breathing problems. On 23.05.2004, appellant no.1 again informed respondents that the deceased was not feeling well and had breathing problems. However, the respondent instead of taking extra care, conducted only a routine check-up and found her to be completely fit. According to appellant no.1, the respondent never paid any heed to the request of the appellant no.1 to shift the patient/deceased to a better hospital. On 24.05.2004 the appellant again informed his wife's condition and requested the respondent to allow him to shift to some other hospital. The respondents informed that they had all facilities including ventilator etc., being a super facility hospital and refused to shift the patient to another hospital. However, on 25.05.2004 at about 02.00 p m the respondents informed appellant no.1 that the condition of his wife was not satisfactory and due to insufficient staff in the hospital of the respondent to accompany the wife of the appellant no.1 to the Medical Trust Hospital at Ernakulam which was only half an hour distance from the hospital. The respondents took the wife of appellant no.1 to the Medical Trust Hospital, Ernakulam at around 05.00 pm when the night duty staff nurses reached the hospital. However, on the way to the Medical Trust Hospital, the condition of the appellant's wife worsened and she was brought back to the hospital of respondent no.1, where she was declared dead. Appellant no.1 immediately lodged FIR no.343 of 2004 with the Police Station, Alappuzha the same day.

3. The appellants filed an Original Complaint OP no. 7 of 2006 on 20.05.2006 under section 17 of the Consumer Protection Act, 1986 before the State Commission, Kerala seeking compensation of Rs.50 lakhs for medical negligence, deficiency in service, mental agony etc.

4. The complaint was contested by the respondent by way of written version. The State Commission, on contest, dismissed the complaint filed by the appellants. However, the Court of Chief Judicial Magistrate, Alappuzha in FIR no. 343 of 2004/ Complaint Case no.230 of 2008 convicted respondent no.3 under section 304 A IPC on 03.05.2011. Hence, the appellant is before this Commission with the following prayer:

i. Pass an order allowing the present appeal and order may be modified by granting relief for an amount of Rs.50 lakh for mental agony, deficiency in service, medical negligence, loss of salary etc., with interest;
ii. Award to the appellant cost of and relating to the present appeal; and
iii. Pass such other and/or further (order(s) as this Hon'ble Commission may deem fit and proper in the fact and circumstances of the present case.

5. We have heard the learned counsel for the parties and have carefully considered the material on record.

6. Learned counsel for the appellant has stated that appellant no.1's wife late Manju died due to medical negligence of the respondents/ hospital. It is submitted that the deceased was admitted in the respondent no. 1 hospital on 20.05.2004 for her second delivery and the respondent doctors after a detailed check-up of the deceased on 21.05.2004 found her completely fit and thereafter conducted a caesarean operation on 22.05.2004 using spinal anaesthesia and appellant no.3 was born around 01.03 p m. It was further stated that during the caesarean operation on 22.05.2004 neither the General Surgeon nor the Sr Gynaecologist were present. It is submitted that despite appellant no.1 repeatedly informing the hospital that the deceased wife was not feeling well and was having problems of breathing, and requesting the hospital to shift the deceased to some other hospital, the request were turned down by the respondent stating that the said hospital had all the facilities as a super speciality hospital and therefore there was no need for shifting the patient to another hospital. Thereafter, it was the respondent who on 25.05.2004 informed appellant no.1 that the condition of the deceased was not satisfactory and undertook steps to shift the deceased to Medical Trust Hospital, Ernakulam. However, on the way to the hospital, the condition of the deceased deteriorated and immediately they returned to the respondent no.1 hospital, where the wife of the appellant no.1 passed away.

7. Appellant stated that the respondents were aware of the medical history of the deceased, as she had undergone a caesarean operation for her first delivery in the same hospital and respondent no.1 had all her medical records.

8. It was also submitted by the learned counsel for the appellant that the respondents were forced to bring the deceased back to respondent no.1 hospital after travelling halfway to the Medical Trust Hospital, Ernakulam since the staff accompanying the deceased in the ambulance found the condition of the deceased deteriorating due to lack of oxygen in the cylinder. The post mortem report of deceased clearly shows that the deceased died due to shock following haematometra and postpartum haemorrhage. It is contended by appellant that respondents could have arrested haematometra and postpartum haemorrhage by consulting an expert or detecting the same and taking timely appropriate care as per the advice of expert doctors. Learned counsel further states that the report submitted by the Medical Board erred in placing complete reliance on the expert opinion produced by the

respondents. It is also contended that the report submitted by the Medical Board was completely ignored by the State Commission. It was argued that the respondent also failed to adduce any evidence by cross examining the witness who conducted the post mortem of the deceased to prove their contention. In view of the submissions made by the learned counsel for the appellant, the appeal is prayed to be allowed with cost.

9. Learned counsel for the respondent in their notes of arguments admitted that the deceased was under the antenatal care of the 3rd respondent (Gynaecologist attached to the 1st respondent hospital) for her second delivery. Her first delivery was also under the care of the same respondent. The deceased was admitted on 20.05.2004 and was subjected to caesarean operation on 22.05.2004 by the 3rd respondent. After two days of the surgery, the deceased developed breathing problems. The husband of the deceased requested for shifting to a higher centre. On 25.05.2004, afternoon the deceased had again developed breathing problem and was shifted to the observation ward and ultimately on the same day a decision was taken to shift the patient to Medical Trust Hospital, Ernakulam. It was submitted that according to the appellants there was lack of care on the part of the respondents and lack of oxygen in the ambulance while on transfer to the higher centre that aggravated the deceased's breathing problem and due to the severity of the problem she was taken back to the respondent' hospital where the deceased passed away on 25.05.2004.

10. Learned counsel for the respondent states that due to hue and cry of the appellants and relatives, the police registered an FIR against the respondent on 25.05.2004 itself. The post-mortem was conducted on 26.05.2005. As per the post mortem report, the cause of death was due to shock following haematometra and postpartum haemorrhage. Learned counsel for the respondent further submits that a Medical Board was constituted under the Chairmanship of the District Medical Officer (DMO) and in the report it was stated that there was lack of adequate post-operative and pre-operative care. Accordingly, the police booked the doctors under 304 A IPC as per opinion of the Medical Board. Learned counsel for the respondent further states that the appellants have alleged that the death was due to lack of pre-operative and post-operative care on the part of the respondent and accordingly, prosecution proceedings were initiated and a complaint was filed before the State Commission alleging medical negligence and deficiency in service and claimed an amount of Rs.50,00,000/- as compensation.

11. Learned counsel for the respondent in their joint version denied all the allegations made against them by the appellants. It is contended that there was no lack of pre-operative and post-operative care to the deceased or any sort of medical negligence. The deceased was examined by the doctors of the respondent hospital and it was decided to shift the patient to a higher centre. The doctors at the respondent hospital suspected pulmonary embolism and in view of the medical complication decided to transfer the patient to a higher centre for adequate medical attention. Learned counsel for the respondent further submits that the allegation that the deceased developed breathlessness on 24.05.2004 was false, since the deceased complained of breathlessness only on 25.05.2004 as per the case sheet of the deceased. As the condition of the patient started to deteriorate despite the best efforts by the respondent hospital, it was decided to take the patient to Medical Trust Hospital, Ernakulam. The learned counsel for the respondent further contended that attributing the death of the patient to over dosage of sedatives is totally false and baseless.

12. Learned counsel for the respondent further relied upon the report of the Committee chaired by DMO comprising Professor of Forensic Medicine Police Surgeon and the District Government Pleader which opined that there was lack of pre-operative and post-operative care on the part of the respondents. The Committee obtained the opinion of the Professor and Head of the Department of Obstetrics and Gynaecology of Government Medical College Hospital, Alappuzha and prosecution proceedings were initiated against the respondent no.3 – Gynaecologist. It was submitted that the Chairman of the Committee had deposed before the Court that breathlessness/ dyspnea was due to haemorrhagic shock and that post-operative precautions were not taken by the respondents. It was also stated that the District and Sessions Judge was also of view that the Committee had not considered the relevant records in a proper perspective and that there was no lack of care or negligence on the part of the doctor. Learned counsel for the respondent submits that the appeal be dismissed with cost.

13. From the record, the cause of death as per the Post Mortem Report is recorded as:

> **<u>Opinion as to cause of death</u>**
>
> *The deceased died due to shock following haematometra and postpartum haemorrhage.*

The conclusion of the Expert Committee under the DMO has recorded its conclusion as under:

> "*Opinion that there is lack of reasonable care and exercise of skill in this particular case in timely detecting and preventing post-operative haemorrhage which is the cause of haemetometra and death of the subject."*

However, the State Commission has arrived at the following finding:

> "*As contended by the opposite parties it appears that the death was more likely by pulmonary embolism which is indicated by dyspnea. There will be sudden onset. It is seen that 2/3rd of those who die do so within 2 hours (Text Book of Essentials of Obstetrics by S Arulkumaran and Others at page 381). On suspecting pulmonary embolism the opposite parties have made arrangements and took the patient to Medical Trust Hospital in ambulance accompanied by the anaesthetist and 2 nurses. But on the way the patient collapsed and had to be taken back. It is settled law that error in judgment in diagnosis cannot be treated as medical negligence (Jacob Mathew vs State of Punjab, AIR 2005 SC 3180). The unfortunate event we find cannot be attributed to the lapse on the part of the opposite parties as such. In the circumstances we find that the complaint is liable to be dismissed and we do so."*

14. The issue is before us is whether the respondent hospital and doctors are liable for medical negligence in the treatment of the deceased Manju and whether the State Commission's finding of there being no negligence is a valid conclusion.

15. The law relating to what constitutes medical negligence has been laid down in the Hon'ble Supreme Court's judgment in ***Jacob Mathew Vs. State of Punjab & Anr.,*** in Criminal Appeal Nos. 144-45 of 2004 decided on 05.08.2005, (2005) 6 SCC 1 which has been relied upon by the State Commission. It is based on the *Bolam Test* (1957) 2 A11 ER 118. The test for medical negligence is based on the deviation from normal medical practice and it has been held that establishment of negligence would involve consideration of issues regarding (1) state of knowledge by which standard of care is to be determined, (2) standard of care in case of a charge of failure to (a) use some particular equipment, or (b) to take some precaution, (3) enquiry to be made when alleged negligence is (a) due to an accident, or (b) due to an error of judgment in choice of a procedure or its execution. For negligence to be actionable it has been held that the professional either (1) professed to have the requisite skill which he did not possess, or (2) did not exercise, with reasonable competence, the skill which he did possess, the standard for this being the skill of an ordinary competent person exercising ordinary skill in the profession. It was further held that simply because a patient did not respond favourably to a treatment or a surgery failed, the doctor cannot be held liable *per se* under the principle of *res ipsa loquitur.* In a claim of medical negligence, it was laid down that it was essential to establish that the standard of care and skill was not that of the ordinary competent medical practioner exercising an ordinary degree of professional skill. For negligence to be actionable it has to be attributable and three essential components of "duty", "breach" and "resulting damage" need to be met, i.e.: (i) the existence of a duty to take care, which is owed by the defendant to the complainant; (ii) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and (iii) damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant. Criminal negligence has to be established on the basis of a rash and negligent act which is defined by *mens rea.* It has been held by the Supreme Court as under:

> *Para 48(7).* To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.
>
> *Para 40.* A doctor who administers a medicine known to or used in a particular branch of medical profession impliedly declares that he has knowledge of that branch of science and if he does not, in fact, possess that knowledge he is *prima facie* acting with rashness or negligence.
>
> *Paras 12, 13, 38 and 48(5).* The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law, i.e., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

Paras 16, 14, 17. While negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the *gross and culpable neglect or failure* to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen. It was the imperative duty of the accused person to have adopted. A clear distinction exists between 'simple lack of care' incurring civil liability and 'very high degree of negligence' which is required in criminal cases.

Medical negligence

Paras 31, 30. The subject of negligence in the context of the medical profession necessarily calls for treatment with a difference. There is a marked tendency to look for a human actor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. An empirical study would reveal that the background to a mishap is frequently far more complex than may generally be assumed. It can be demonstrated that actual blame for the outcome has to be attributed with great caution. For a medical accident or failure, the responsibility may lie with the medical practitioner, and equally it may not. The inadequacies of the system, the specific circumstances of the case, the nature of human psychology itself and sheer change may be combined to produce a result in which the doctor's contribution is either relatively or completely blameless. The human body and its working is nothing less than a highly complex machine. Coupled with the complexities of medical science, the scope for misimpressions, misgivings and misplaced allegations against the operator, i.e., the doctor, cannot be ruled out. One may have notions of best or ideal practice which are different from the reality of how medical practice is carried on or how the doctor function in real life. The factors of pressing need and limited resources cannot be ruled out from consideration. Dealing with a case of medical negligence needs a deeper understanding of the practical side of medicine. The purpose of holding a professional liable for his act or omission, if negligence, is to make life safer and to eliminate the possibility of recurrence of negligence in future. The human body and medical science, both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical profession, requires an in-depth understanding of the working a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability.

Paras 48(2), 48(4), 19 and 24. Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident is not proof of negligence on the part

of a medical professional. So long as a doctor follows a practice acceptable to the medical professional of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simple because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused following. The classical statement of law in Bolam case, (1957) 2 AII ER 118, at p.121.D F) [set out in para 19 herein], has been widely accepted as decisive, of the standard of care required both of professional men generally and medical practitioners in particular, and holds good in its applicability in India. In tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioners exercising an ordinary degree of professional skill. The fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge. It is not necessary for every professional to possess the highest level of expertise in that branch which he practises. Three things are pertinent to be noted. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time (that is, the time of incident) on which it is suggested as should have been used. Thirdly, when it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence.

Para 26. No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career. Even in civil jurisdiction, the rule of *res ipse loquitur* is not of universal application and has to be applied with extreme care and caution to the cases of professional negligence and in particular that of the doctors. Else it would be counter-productive. Simple because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable *per se* by applying the doctrine of *res ipse loquitur.*

Paras 10, 11, 48(1). Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence, as recognised, are three: “duty”, “breach” and “resulting damage”, that is to say:

i. The existence of a duty to take care, which is owed by the defendant to the complainant;
ii. The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

iii. Damage, which is both casually connected with such breach and recognised by the law, has been suffered by the complainant.

If the claimant satisfies the court on the evidence that these three ingredients are made out, the defendant should be held liable in negligence.

16. From the above, while distinguishing between civil and criminal negligence in cases of medical negligence, the Hon'ble Supreme Court has clearly laid down the criteria of a failure to provide the standard of care expected of a prudent doctor of reasonable skill resulting in damage.

17. It has also been held by the Hon'ble Supreme Court in ***Jacob Mathew*** (supra) that the adherence to established medical protocols and practice would define standard of care.

18. In the instant case, the finding of the State Commission is based upon the evidence based on affidavits by the respondents on the basis of medical records and treatment provided to the deceased while in the care of the respondents. Based upon the evidence of respondent it has been held that the deceased had a history of bronchitis and was monitored and administered medication for breathlessness after the caesarean operation on 22.05.2004. The line of treatment as recorded by the attending doctors and nurses establish that the deceased was duly attended to and provided medical care through medication and nebulization to treat the symptoms and complaint of breathlessness while in the respondent hospital. However, a decision to shift her to the Medical Trust Hospital, Ernakulam was taken by the attending doctor on 25.05.2004 evening when she failed to respond to the treatment provided. It is the case of the appellant that the respondents failed to provide any medical care to the deceased regarding difficulty in breathing. This is not supported by any evidence on record. On the contrary, there is evidence led by the respondents that the patient was administered treatment for breathing difficulty. There is also no evidence by way of any affidavit on record that there was deficiency on part of the respondent Hospital in not providing oxygen in the ambulance while the deceased was being transported to the Medical Trust Hospital, Ernakulam. The appellant's allegation that the ambulance lacked oxygen is a bald allegation that is not supported by any evidence. Based on these records and the evidence of both parties, the State Commission differed with the report of the post mortem and the Expert Committee appointed under the DMO. It has set out its reasons to do so which is based on the evidence led before it. The report of the Expert Committee has not included examination of the witnesses who gave evidence before the State Commission such as page 31 Volume I. Based on evidence led before it, the State Commission has concluded that there was neither deficiency in the standard of care nor any *mens rea* amounting to gross negligence in the treatment of the deceased. For these reasons the State Commission has differed with the decision of the Report of the Expert Panel Committee and the conclusion of the doctor who conducted the post mortem. In the light of the judgment in ***Jacob Mathew*** (supra) the conclusion of the State Commission cannot be faulted. The appeal, on the contrary, relies upon the Expert Committee's report and the post mortem report. As stated above, these reports have been held by the State Commission to be not entirely supported by the evidence on the record. While an Expert Opinion has been mandated by the Hon'ble Supreme Court in cases of medical negligence in its judgment in ***M A Bijvi vs Sunita and Ors.,*** (2024) 2 SCC 242, in ***V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Anr.,*** Civil Appeal No. 2641 of 2010 decided on 08.03.2010, (2010) 5 SCC 513 the Hon'ble

Supreme Court held that the requirement to obtain an independent medical opinion before initiating investigations against a doctor as per directions in ***Jacob Mathew*** (supra) applies to criminal and not civil liability and that since medical negligence is a mixed question of law and fact, a Consumer Forum is not bound by the views expressed by the expert. The State Commission after examination of the evidence based on the medical records of treatment in the respondent hospital arrived at a finding that the expert opinion cannot be relied upon. At this stage it is apposite to revisit the opinion of the Expert Committee appointed by the Police following the filing of the FIR. This Committee which was headed by the District Medical Officer (DMO) reads as under:

> "In continuation to the meeting held on 04.02.2006 a questionnaire was prepared and the answer for the same obtained from the professor and Head of the Department of O & G TD Medical College Alappuzha (Letter n.33/06 O & G dated 08.02.2006). The members of the expert panel committee perused the case sheet of the concerned case from Sahrudaya Hospital in the light of the answers provided by the above subject expert. We found that the essential pre-operative measures that are to be adopted.

i. The blood grouping and cross matching that is quite essential for previous Caesarean case that is to with BOH has not been done in this particular case.
ii. Caesarean section was found to be done on 22.05.2004 at 13.03 hours and female baby was delivered. Till night of 24.05.2004 it was recorded as 'Uneventful'.
iii. As per opinion of the subject expert, the essential post-operative monitoring in case of previous Caesarean are:

a. Monitoring to detect post partum haemorrhage like vaginal bleeding;
b. Whether uterus is contracted or not-were not found monitored in the available hospital records.

> Hence, the committee is of the opinion that there is lack of reasonable care and exercise of skill in this particular case in timely detecting and preventing post operative haemorrhage which is the cause of haemetometra and death of the subject.

From a plain reading of the above, it is evident that it is not based upon examination of the treating doctors or nursing staff of the respondent hospital. Its conclusions appear to be guided more by the post mortem report. If medical negligence has to be established, the standard of care and the following of medical protocol must necessarily be examined to arrive at a conclusion. In the case of criminal negligence to be established, *mens rea* must necessarily be established. The conclusion of the Expert Committee appointed under the DMO does not do so since its conclusion is that *"*there is lack of reasonable care and exercise of skill in this particular case in timely detecting and preventing post operative haemorrhage which is the cause of haemetometra and death of the subject*"*. The State Commission has therefore rightly disregarded the same. The State Commission has set out reasons for not being persuaded by the Expert Opinion placed before it. In light of the documentary evidence that the deceased patient had a history of bronchitis even during the previous delivery in the same hospital and was indeed provided the standard of care expected while in the respondent no. 1 hospital and the lack of evidence produced by the appellant to support its case that such medical care was not provided, the impugned order cannot be faulted.

19. For the aforesaid reasons, we find that the impugned order is based on facts and the legal principles laid down for the adjudication of cases alleging medical negligence by the Hon'ble Supreme Court and does not warrant our interference. Based on the foregoing we are inclined to consider the assessment of the State Commission as a more acceptable evaluation since neither of the three ingredients of medical negligence to be established are met. The conclusion of *shock following haematometra and postpartum haemorrhage* as per the post mortem report has been disregarded by the State Commission on the basis of the deposition of affidavit by Dr Christal Marry who is an expert that such cases of shock following delivery do not survive for four days after delivery. While it is a fact that an Expert Committee was appointed as per the directions of the Police following the death of the patient, the report of the Expert Committee under the DMO is sketchy and does not provide any reasons for its conclusions while relying on the post mortem report. It has not considered the medical records of the hospital to arrive at a finding with regard to whether the treatment provided was as per the standard of care or not and whether the treating Doctors, Staff or hospital provided the necessary treatment as per standard protocol or erred in doing so. It has proceeded to discuss the post mortem report only which has already concluded the cause of death to be shock following haematometra and post portum haemorrhage. The State Commission has justified to reasons for disagreeing with this report. We are therefore, not inclined to interfere with the order of the State Commission. The appeal is accordingly disallowed. Parties shall bear their own costs.

20. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER