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(2005) 05 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

SHEELA HIRBA NAIK GAUNEKAR — APPELLANT

Vs

APOLLO HOSPITALS LTD., CHENNAI — RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Citation : 2005 0 NCDRC 71 : 2005 2 CPC 67 : 2005 2 CPR 95 : 2005 3 CPJ 56

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Advocate : DHRUV MEHTA , MOHIT CHAUDHARY , HARSHVARDHAN JHA , S.GANESH , A.S.CHANDRASEKARAN , SUREKHA RAMAN , JOSEPH VELLAPALLY , MANI SHANKAR , Som Mathew

Judgement

1. WIFE of the deceased, Mrs. Sheela Hirba Morto Naik Gaunekar, has filed this complaint alleging deficiency in service rendered by the doctors of the Apollo Hospital, Chennai, who carried out the Angioplasty operation, which resulted in death of Mr. Gaunekar on 18.5.1996 in the hospital. It is her say that on 9.4.1996, the deceased was to celebrate his 60th Birthday. However, he was admitted in Goa Medical College, Bambolin, on 1.4.1996 and was kept under observation for 8 days and was discharged on 9.4.1996. During the observation, the doctors advised the deceased to have Angiography at some future date to dispel doubts of possible blockage of blood vessels. He thereafter took appointment from Dr.Mathew and went to Apollo Hospitals, Madras on 9.5.1996. Angiogram was taken on 10.5.1996 and the deceased was advised to have Angioplasty by putting stents. Angioplasty was decided to be done on 14.5.1996 at 9.00 AM. 3. On 14.5.1996, the deceased was given light breakfast and tea at 6.30 AM and was taken to Cathlab at 9.00 AM for Angioplasty. Instead of carrying out Angioplasty, Dr.Vivek Bose came at 12.00 O''clock and assured that Mr.Gaunekar will be taken to Cathlab very soon. However, he was taken only at 4.00 PM in the evening. The complainant was informed at about 6.30 PM by Dr.Vivek Bose that the whole procedure was over and there was no problem in inserting the stents. Thereafter, Mr.Gaunekar was taken to ICCU. 4. It is the say of the complainant that after going to the ICCU, she noticed that the air-conditioner in ICCU was not working and Mr.Gaunekar was restless and

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perspiring. She, therefore, complained to the doctors. It is her say that in Madras, at the relevant time, temperature was 43oC. She had even complained to the Managing Director''s office for this. Thereafter, Dr.Mathew came and informed her that there was nothing to worry as the whole Angioplasty process went on very well and there were no blocks or deposits in the arteries. Therefore, the process took only 20 minutes instead of 30 minutes. 5. It is the say of the complainant that she requested Dr.Vivek Bose that as the air-conditioners were not working in the ICCU, Mr.Gaunekar be shifted to the room on 15th evening, as promised earlier. However, Dr.Vivek informed that Mr.Gaunekar needed to be monitored further for one day more. 6. Mr.Gaunekar was brought to the room on 16th morning. He was having general weakness and the nausea continued. Thereafter, doctors came and saw him and prescribed some medicines. He had hiccoughs throughout the day. On 17th morning also he was having nausea and was given anti-vomitting drug. On that day, in the evening, Dr.Mathews and his team saw the deceased and they informed that he was quite normal and that he would be discharged on the next day morning. She, therefore, paid off the hospital bills as they were supposed to leave the hospital on 18.5.1996 at 9.30 AM. She was informed that general weakness of Mr.Gaunekar would be overcome after he gets his normal food, once he goes home. He was advised to restrict oil, sugar and salt intake. 7. Thereafter, it is her say that the deceased went to sleep on 17.5.96 at about 10 PM and got up at 11.30 PM to go to toilet. She accompanied him to the bathroom but before passing urine he collapsed and she could not control him. She called the nurses and the doctors who picked him up. Thereafter, the deceased was made to walk to his bed. It is her contention that at the relevant time he turned pale, his lips were also pale and rolled his eyes. This was noted by the nurses and the RMO but ECG was not taken. On her insistence, Dr.Vivek Bose came. It is her say that at that juncture it was necessary to shift Mr.Gaunekar to ICCU and to monitor the working of his heart and to carry out the examination of the head and brain which the doctors had neglected to do. 8. In the complaint it is her further say that Mr.Gaunekar was restless and in spite of the air-conditioner he felt warm. Thereafter, at about 1.30 AM he was given sedative treatment and thereby the deceased was snoring loudly but was not normal. At that stage also Dr.Vivek assured her that everything was normal and the deceased would be alright. 9. At about 5.30 AM on 18.5.96, the deceased got up all dazed and asked for the doctor and Dr.Vivek attended on him for 5 minutes. At this juncture also Dr.Mathew did not come. Dr.Vivek asked her to cancel the tickets and informed her that the deceased would be taken to ICCU. On the way to ICCU, Mr.Gaunekar had a Cardiac Arrest. Dr.Vivek informed her that they were trying their best to revive him. Dr.Mathew was called and he came from the airport to the ICCU. Mr.Gaunekar remained unconscious. He had all sorts of life saving gadgets around him but was declared dead at 9.45 AM. 10. In the complaint, a number of deficiencies are mentioned. However, at the time of hearing of this complaint, learned counsel for the complainant had submitted the deficiencies mentioned by the witness Dr.Desai, a Thorasic Surgeon from Goa who gave his opinion on 26.6.2002 and on 18.1.2003

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on the basis of the medical record made available to him. These have been grouped by the Complainant as follows: a. Non-functioning of air-conditioner in ICCU leading to restlessness of the patient and the other complications such as temperature in Madras at the relevant time was 43 degree C. b. Delay in carrying out angioplasty on 14.5.1996 and prolonged starvation of the patient - its consequences. c. Reference to the sheath removal and application of digital pressure on puncture side. Not attending to the haematoma at the groin. d. Fall in the bathroom at 11.30 p.m.on 17.5.1996 and not taking adequate measures at 11.30 p.m. and again at 2.30 a.m. on 18.5.1996 when discharge of the patient was cancelled. e. Patient collapsing in the lift at 5.30 a.m. on 18.5.1996 while being taken to the ICCU. And, f. Vagueness in the Death Certificate and Discharge Summary.

11. Before we proceed to state the version of the opposite parties, it is necessary to state certain established facts. Dr. Mathew, Consultant and Honorary Director, Interventional Cardiology who performed the surgery on the patient at the Apollo Hospital is not an employee of the Apollo Hospital. He only uses the facilities of the Apollo Hospital and charges his patients directly. Dr. Vivek Bose, the Associate Cardiologist is on the payrolls of the Apollo Hospital. At the relevant time, he was working in the Interventional Cardiology Department at the Apollo Hospital with Dr. Mathew, looking after Dr. Mathew''s patients during their stay in the hospital, prior to surgery/procedures, post surgery/ procedures and also used to help Dr. Mathew during the surgery/procedure. 12. Dr. Vivek Bose is an M.D. (Medicine) and D.M. (Cardiology) and was a gold medalist. For looking after Dr. Mathew''s patients he was also paid some amount by Dr. Mathew. Though the Complainant raised complaints of delay in performing the angioplasty, and of not attending to the patient after 3.00 p.m. on 17th May, 1996 against Dr. Mathew, the main thrust of the arguments of the Complainant is against Dr. Vivek Bose and the hospital staff for negligence of the post-operative care. However, Dr. Vivek Bose has not been made a party to the proceedings but was only examined as a witness. 13. After hearing the arguments of both the parties and after a careful consideration of the evidence on record, our findings on each of the set of the complaints is as follows: a. The allegation is that the air-conditioner in the ICCU was not working on 14th May and that this had led to dehydration of the patient and loss of electrolyte and potassium causing arrhythmia. The case of both Respondents No. 1 and 2 is that the air-conditioner was in fact working throughout the daytime on the 14th and that there was some problem with the air-conditioner in the evening. However, it is also a fact that all the beds in the ICCU were fully occupied and all the patients were feeling comfortable and no one complained of lack of air-conditioning. But Mr. Gaunekar was complaining of the unsatisfactory working of the air-conditioner. The hospital and Dr. Bose arranged two pedestal fans in addition to the air-conditioner to make Mr. Gaunekar more comfortable. We find that there is no clinical or medical evidence regarding the allegation of dehydration or loss of electrolyte and potassium etc., and that the allegations are without any basis and imaginary. b. The second

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complaint is that on the 14th, there was considerable delay in taking Mr. Gaunekar for the Angioplasty procedure and that being a diabetic patient he might have developed hypo-glycemia because of the delay. Once again we find that no medical evidence was led to show that Mr. Gaunekar developed or shown at any stage, any signs of hypo or hyper-glycemia and ketoacidosis and that these allegations once again are without any basis. Dr. Mathew was fully aware and conscious of the fact that Mr. Gaunekar is a chronic diabetic patient and also is hypertensive. The patient was asked to take light breakfast at around 6.30 a.m. on 14.5.1996 and to be on the call for Angioplasty. There is enough evidence on record to show that no specific time was fixed for the Angioplasty and in fact all records show that the patient was to be on call for Angioplasty on 14.5.1996. The Nurses Chart dated 13.5.1996 clearly states "posted for PTCA tomorrow on call". Dr. Mathew stated in his affidavit that he expected to take the patient for the operation around noon but as the earlier Angioplasty took more time than expected the procedure for Mr. Gaunekar was delayed. On his instructions Dr. Vivek Bose informed the patient of the delay and advised him to have fruit juice or light lunch which the deceased did. The Complainant herself admits that Dr. Bose met the patient at 12 noon. Investigations to detect the blood sugar level for hypo or hyper-glycemia were conducted at 12 noon and found to be within acceptable limits. He was shifted to Cath lab at 2.20 p.m. and the angioplasty was performed. The procedure was completed successfully and the patient was received back in the ICCU at 4.50 p.m. The clinching argument advanced by Dr. Mathew is that fasting for upto 10-12 hours prior to surgery/ procedure does not lead to the occurrence of diabetic Ketoacidosis (Hypoglycemia) or electrolyte imbalance even in the diabetic patient, and in this, Dr. Mathew is supported by the expert opinion of Dr. Kerkar. Otherwise, all diabetic patients could develop hypoglycemia every morning when they wake up. We, therefore, see no force in the allegation of delay in conducting Angioplasty. c. The Angioplasty procedure was conducted through a puncture in the groin. To avoid bleeding from this puncture an arterial sheath was applied at the groin. Dr. Vivek Bose who removed the arterial sheath took longer time than usual to get proper homeostasis so the patient was not allowed to move till the puncture site is fully healed. Because of the patient''s history of hypertension Dr. Mathew and Dr. Bose took the decision to keep him in the ICCU for an extra 12 hours in his own interest. The allegation that Mr. Gaunekar suffered an extra 12 hours in the ICCU without air-conditioning has no valid basis. Another complaint is that it took Dr. Bose three hours to obtain full Homeostasis and that there was oozing of blood from the puncture site and that the Doctors should have considered surgical stitches or blood transfusion and they did not even obtain the opinion of a Cardiovascular Surgeon. Dr. Bose mentioned that he had followed the standard procedure and that six hours after the Angioplasty, he removed the arterial sheath himself and gave digital compression (i.e. with hand) till proper homeostasis was obtained. He stated that he waited for three hours to obtain full homeostasis and tightly bandaged the groin. When proper homeostasis obtained, a small hematoma was noticed which was within acceptable limits. There was no

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bleeding and digital pressure compression to stop bleeding after sheath removal is a standard procedure all over the world. The small hematoma observed is again a normal phenomenon after sheath removal and was within the acceptable limits. Since there was no bleeding, there is no need to have surgical stitches or blood transfusion. The bleeding and clotting time were also measured and found to be normal and there was no need to consult a Cardio-Vascular Surgeon. In addition, Dr. Mathew has stated that he, his team and the nurses inspected the groin puncture site on the 15th, 16th and 17th May and found that everything was within normal limits. Therefore, there is no evidence to show any deficiency in service regarding sheath removal and groin care. We find that none of these averments of the opposite parties were challenged with any appropriate medical evidence to the contrary. The allegation is therefore without any medical evidence or proof.

d.The main emphasis of the Complainant has been on point D. It is alleged that at 3.00 p.m. on 17.5.1996, Dr. Mathew, the Cardiac Surgeon attending on the patient, saw the patient and advised that he should be discharged. The Complainant cleared the hospital bills and made arrangements to leave the hospital at 9.30 on the next morning i.e. on the 18th. Accordingly, tickets for going back to their home town Goa were also arranged. However, it is alleged that the patient slept at 10.00 p.m. on 17th night but got up at 11.30 p.m. for urination. The Complainant accompanied the patient to the bathroom and it is alleged that the patient fell down in the bathroom. The attending nurse, who was summoned, helped him to get up and after passing urine he was made to walk to his bed. The Resident Doctor, Dr. Bhaskar Rao examined the patient. The artery which was punctured was bleeding and there was hematoma at the wound. It is alleged that the Doctor concentrated on the wound and did not pay attention to the patient''s general condition or tried to find out why he collapsed.

Thereafter, the patient was restless and hence Dr. Vivek Bose was summoned at about 2.30 in the early morning hours of 18.5.1996. Dr. Vivek Bose then decided at 2.45 a.m. that the orders for the patient''s discharge should be cancelled and further instructed that the patient should be given sedation. Thereafter at 5.30 in the morning when he was being taken to the ICCU, he developed cardiac arrest in the lift and in spite of various efforts made to revive him he died at about 9.15 a.m. Dr. Desai who had been examined as witness of the Complainant had stated that six hours between 11.30 p.m. on 17th to 5.30 next morning on 18th was a very crucial period and that the patient should have been shifted to ICCU immediately at 11.30 p.m. when he complained of giddiness. The Operating Surgeon, Dr. Mathew should have been informed of the patient''s condition which was not done. Dr. Mathew was to address a Medical Conference at Pune on the next day, i.e., 18.5.1996 and when he was at the airport, he was informed only at 6.00 a.m. on 18th about the patient''s condition and he rushed back to the patient. The argument is that between 3.00 p.m. on 17th when Dr. Mathew ordered the discharge and 6.30 a.m. on the next morning on 18th Dr. Mathew was not kept informed of the patient''s condition. It is also argued that after

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11.30 p.m. on 17th , opinion of the Cardio- Vascular Surgeon should have been obtained about the Hematoma in the groin and an ultrasound examination should have been done to see if there is any blood collection in the deeper tissues. Similarly, a C.T. scan should have been done at that stage and the opinion of Neurosurgeon should have been obtained to know the reasons for the giddiness and fall of the patient in the bathroom. He should have been immediately shifted to the ICCU and various tests like Haemoglobin, ECG, Blood Sugar, Blood Urea, Cerium Critemin, Serium Electrolyze, Acid base estimation should have been done at that stage. The failure to do all the above, it is argued, amounts to negligence.

14. The thrust of the complaint is that Dr. Vivek Bose joined Apollo Hospital only in January 1996, and that he was not very experienced and that he was negligent in not informing Dr. Mathew between 11.30 p.m. on 17th and 5.30 a.m. on 18th. It is argued on behalf of the Respondents that Dr. Bose is a well qualified and experienced Doctor having obtained MD (Medicine) and DM (Cardiology) and that in addition to the Resident Doctors, Dr. Bose himself attended to the patient very promptly at various points of time in the night of 17th at 2.30 a.m. and 5.30 a.m.(on 18th). It is argued that the patient did not fall down in the bathroom at 11.30 p.m. However, on behalf of the Complainants, it is argued that the words "fell down" have been scored off from the medical records. Dr. Bose averred that as far as his knowledge goes the patient did not fall down and he was informed by Dr. Bhaskar Rao that the patient felt giddy. But there was no rebuttal of the version of the Complainant that the words "fell down" have been struck off from the record. We therefore believe in the version of the Complainant. Dr. Bose as well as Dr. Mathew have argued that the cause for the giddiness was the pain in the groin and subsequent vasovagal syndrome from which the patient recovered immediately and that all his clinical parameters were normal even at 5.30 a.m. when the patient suffered cardiac arrest in the lift while being transferred to the ICCU. We find that although Dr. Bose averred that he was fully competent to handle independently the post-operative care of the patient and that he did not feel the need to inform seniors, we find his experience is actually limited to few months in this field. We would revert to this in more detail in a latter paragraph but we would like to state that no evidence is available to show that the events during the night of 17th/18th May have led to the death of the patient. e. Dr. Bose in his deposition stated that at about 5.20 a.m., the attending nurse informed him that the patient was restless. That at 5.30 a.m., Dr. Bose again saw the patient and found him to be restless though his vital signs were normal. He decided to shift the patient to the ICCU for monitoring as an abundant caution, though the Complainant objected to shifting the patient to the ICCU as the air-conditioning there was not allegedly satisfactory. Unfortunately the patient had a pulmonary cardiac arrest in the lift while on the way to the ICCU. He was revived with cardio pulmonary resuscitation measures. He was incubated and put on 100% oxygen and ventilated in the ICCU. At the time of receiving in the ICCU, Registrar found that

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the patient had signs of irreversible brain damage like not responding to painful stimuli and with pupils dilated and not reacting and was unconscious. By this time Dr. Mathew rushed back to the patient and administered to life saving measures. After cardio pulmonary resuscitation the Doctors were able to get the cardiac rhythm back and with heavy doses of drugs were able to prop up blood pressure for sometime. However, in spite of their best efforts, the patient remained unstable and ultimately declared dead at 9.45 a.m. Dr. Mathew stated that even after the unfortunate death of the patient, the Complainant was fully appreciative of the herculean efforts made by Dr. Mathew and his team to save the patient. In fact, the Complainant paid the fees of Dr. Mathew five days after the death, though Dr. Mathew himself was reluctant to accept the payment. He therefore argues that the Complainant was fully satisfied with the treatment in the hospital, and never complained about any part of the treatment in the hospital, except for the complaint about the unsatisfactory working of the air-conditioner in the ICCU. It is argued that the complaint filed one year after the operation, was an afterthought. It is further argued that the death of the patient after three days of the operation was only because of cardiac arrest which could not be predicted.

We agree with the arguments of the opponents and hold that there was no negligence in treatment of the patient after 5.20 p.m. on 18th. f. Regarding the vagueness of the death certificate, it is argued by the Complainant that the cause of death is given as "CerebroVascular/Accident/Diabetes/Mellitus/ Hypertension/Coronary Artery disease/Rest PTCA status". It is argued that diabetes, hypertension and coronary artery disease are diseases that can afflict a patient and cannot be the exact causes of the death. Similarly the mention of Rest PTCA (Percutaneous Transluminal Coronary Angioplasty, meaning that the patient has undergone an Angioplasty) cannot be the cause of death and it is therefore alleged that death certificate is deficient. Opposite party No.1 has argued that it is the standard practice of the Apollo Hospital to list all diseases in the death certificate. It is further averred that in addition to the death certificate, a death summary was prepared by Dr. Bose which clearly showed that death was due to Cardiac arrest leading to irreversible brain damage and hence described as due to "Cerebral-Vascular Accident." It is further argued that the brother of the Complainant is a senior police officer and he was present when the death took place and neither he nor the Complainant asked for a post-mortem. We do not think that the Doctors at the Apollo Hospital made an effort to mislead or misrepresent the cause of death. We therefore hold the Complainant has not made out a case against the opposite parties in this regard. We would now examine the quality of the post-operative service especially in the light of the incidents on the night of 17th/18th May 1996. In the treatment of a patient coming in for a surgical procedure, the post-operative care is as important as the care that has to be attached to the surgical procedure itself. While we have stated that the surgery seems to have proceeded well, we find that adequate attention has not been given to the post-operative care. 36 hours after the

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surgery, the patient was brought from the ICCU to his room on the 16th morning. It is admitted that sometime before 2.00 p.m. on the 16th, the patient had vomiting. It is also admitted that at 2.00 p.m. the blood pressure was 190/90 and the pulse was 96. It is again admitted that the patient developed severe rigor at 7.45 a.m. on the 17th. The record again show that at 11.30 p.m. on the night of 17.5.1996, the patient fell down in the bathroom when he went for urination, though the words "fell down" have been struck off from the hospital record. All these indicate that the patient has not really stabilized after the operation. However, at 11.30 p.m., it was only a junior Resident, Dr. Bhaskar Rao who attended on the patient and gave a clinical diagnosis that the patient developed Vaso Vagal Symcope secondary to groin pain. No pathological tests were however carried out between 11.30 p.m. on the 17th and 2.30 a.m. on the18th when Dr. Vivek Bose saw the patient. During this period the only medicines given were analgesics for reducing pain and for inducing sleep.

15. When Dr. Bose saw the patient at 2.30 a.m. on the 18th, the only thing he did was again a clinical examination on the basis of which he says he confirmed the diagnosis of Vaso Vagal Symcope. At 2.45 a.m. Dr. Bose says that he ordered that the discharge of the patient slated for 9.30 a.m. on the 18th should be cancelled. Obviously, Dr. Bose felt concerned about the patient''s condition. Otherwise he would not have ordered cancellation of discharge of the patient on his own authority by modifying the discharge order of his boss (Dr. Mathew) and even though it meant cancellation of air travel reservation made earlier with some difficulty. But he did not deem it necessary to shift the patient to ICCU at that stage. He did order tests for blood parameters and an ECG. But none of these were in fact carried out till 5.20 a.m. on the ground that the patient was fast asleep. However, Dr. Bose himself admitted that when he saw the patient at 2.30 a.m. the patient was awake and talked to him. Even during the period 11.30 p.m. on 17th and 2.30 a.m. on 18th there was ample time when an ECG could have been taken without disturbing the sleep of the patient, but none of the Doctors thought of an ECG at that time. Dr. Bose also admitted that he did not order a C.T. scan and ultrasonography, but justifies on the ground that there was no corresponding clinical examination. 16. But as pointed out above, the patient was neither stable nor normal. At 5.20 a.m. Dr. Bose was summoned by the nurses as the patient was complaining of restlessness. It is at that stage Dr. Bose decided to shift him to the ICCU. However, before he could be reached to the ICCU, the patient had a cardiac arrest in the lift. We do therefore hold that there has been certain amount of negligence and apparent deficiency in service in the post-operative care of the patient during the night of 17th/18th 1996. One does not expect or countenance such type of deficiency from a super specialty hospital like the Apollo. 17. The next question that requires consideration is whether this deficiency in the post-operative care has caused death of the patient or to what extent it contributed to the death. For either of these purposes there is no evidence on record. The apparent cause of death is the cardiac arrest suffered by the patient. A cardiac arrest can happen suddenly and in an

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unforeseen manner. It is therefore not possible to give a finding as to whether the above narrated negligence in post-operative care has to what extent contributed to the death of the patient. A postmortem examination could perhaps have shown the factor leading to the death of the patient. However, as brought out earlier, no post-mortem was insisted upon by the Complainant or the relatives of the deceased. In fact, brother-in-law of the deceased who was a high ranking police officer was present at that time and even he did not ask for the post-mortem examination. 18. Considering the fact that the deceased was diabetic, alcoholic and having hypertension, it would be difficult to arrive at the conclusion that the aforesaid deficiency in service by the hospital alone has resulted in the death of the patient. However, the fact remains that there has been some negligence in the post-operative care and the hospital staff should have shown more alertness and urgency in looking after the patient during the crucial time on 17th/18th when patient was complaining on various counts such as giddiness and restlessness. Although worried Complainant brought all these factors to their notice and O.Ps.''s have themselves had concern to stop the discharge of the patient for the next day, then why did they take post-operative treatment of the patient lightly? Mere couple of rounds of Doctors doing clinical examination without doing crucial tests such as ECG does not show vigilance and alertness from the opposite party which is known to be one of the premier Institutions. 19. From the aforesaid discussion it can be held that even though Angioplasty was successfully carried out on 14.5.96 there was deficiency in service in post-operative treatment particularly on 17th /18th. Apart from operation, post-operative treatment is equally important in such surgeries because complications may arise at any point of time. For treating such complications alertness on the part of the resident doctors/nursing staff is must. If that is not done, it would be a deficiency in service by the hospital. In the present case the patient had giddiness; had fallen in the bathroom; was restless and had nausea. These indications ought to have made the doctors and the staff alert at least for examination by ECG. That was not done on a pretext that the deceased was fast asleep. 20. Therefore, for the deficiencies brought out above, we allow the complaint in part and direct opposite party No.1, Apollo Hospital to pay a nominal amount of Rs.2 lakhs as compensation to the Complainant with interest at 6% p.a. from the date of complaint till payment and Rs.10,000/- costs within four weeks of the receipt of this order.

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