INDIAN INSTITUTE OF MANAGEMENT
AHMEDABAD • INDIA

Research and Publications

Medical Negligence and Compensation in India: How Much is Just and Effective?

Anurag K. Agarwal

W.P. No.2014-03-27
March 2014

INDIAN INSTITUTE OF MANAGEMENT
AHMEDABAD-380 015
INDIA

Medical Negligence and Compensation in India: How Much is just and Effective?

Anurag K. Agarwal
Professor, Indian Institute of Management Ahmedabad
Email: akagarwal@iimahd.ernet.in

Abstract

There is no denying the fact that human life is precious and in cases of medical negligence, the judges find it extremely difficult to decide on the quantum of compensation as the quantum is highly subjective in nature, and despite the best efforts of the legislature to enact certain laws which can somehow provide a framework for arriving at a quantum, and also interpretation by the judiciary for so many decades, it has not yet been finally settled as to what should be the method used for determining compensation in cases of medical negligence. The multiplier method – followed typically in motor accident cases – provides certainty but does not often end up in arriving at 'just and adequate compensation'. Hence, the courts rarely follow it in cases of medical negligence. A recent case – Kunal Saha – decided by the Supreme Court in October 2013 has once again raised this extremely important and unsettled issue for debate and discussion. Whatever the quantum of compensation, does it have any serious financial, or any, effect on the erring hospitals and medical professionals is also debatable. This paper examines the issues related to just, adequate and effective compensation in cases of medical negligence and provides certain suggestions.

Keywords:

Compensation, Consumer courts, Discretion, Just and adequate, Medical negligence, Multiplier method

Medical Negligence and Compensation in India: How Much is just and Effective?

1. INTRODUCTION:

Last year, a case – *Kunal Saha*[1] – which had been dragging on in the courts for almost fifteen years for award of adequate and just compensation was finally decided by the Supreme Court on October 24, 2013, and it awarded a little more than Rs. 6 crores plus interest[2], which has been so far the highest compensation ever awarded by any court in India for medical negligence. Though the lawyers for the hospital and the doctors argued that the multiplier method should have been used for calculating compensation, the Supreme Court was clearly of the view that the method was not suitable for determining the quantum of compensation for medical negligence.

Kunal Saha's case:

Dr Kunal Saha was a doctor in the United States and came to India with his wife, Anuradha, in April 1998. She complained of fever and itching and was treated by Dr Sukumar Mukherjee and later at the AMRI hospital in Kolkata. Her condition deteriorated and she was taken to the Breach Candy Hospital in Mumbai, where she passed away in May 1998. It was established that the doctors and the hospital had been negligent. Kunal filed for civil compensation of almost Rs.100 crores in the consumer court – National Consumer Dispute Redressal Commission (NCDRC) – and after a 15 year legal battle was awarded Rs. Six crores plus interest by the Supreme Court of India in October 2013.

2. JUST COMPENSATION:

It is difficult to define 'just compensation,' however, in *Sarla Verma's* case[3] the Supreme Court discussed it with a lot of clarity and precision. However, it still is open to interpretation. It was observed:

> *"Compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just…Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit…Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions"*[4]

The courts were grappling with serious issues of inconsistency. In the same case, the Supreme Court also observed that different courts and tribunals in the country after exercising judicial discretion in determining the amount of compensation in an inconsistent manner, which led to uncertainty and unpredictability, causing anxiety to the claimants and also leaving room for arbitrariness. The Supreme Court emphasised that there was a need to have just, fair, and adequate compensation. It observed:

> *"The lack of uniformity and consistency in awarding compensation has been a matter of grave concern…If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence*

[1] Dr. Balram Prasad and others v Dr. Kunal Saha and another; Supreme Court of India; 24 October 2013; Bench – V. Gopala Gowda, C. K. Prasad, JJ.; Reported in 2013 Indlaw SC 696; (2014) 1 SCC 384; 2013 (4) ACC 378; 2014 (1) Bom.C.R. 397; 2013 (6) KarLJ 161; 2013 (7) MLJ 781; 2013 (4) RCR(Civil) 946; 2013(13) SCALE 1

[2] Simple interest at the rate of 6% for about 15 years also amounted to almost Rs. 6 crores, thus making the total sum to be paid as something close to Rs. 12 crores.

[3] Sarla Verma and Others v Delhi Transport Corporation and Another; Supreme Court of India; 15 April 2009; Bench: R.V. Raveendran and Lokeshwar Singh Panta, JJ.; Reported in 2009 Indlaw SC 488; (2009) 6 SCC 121; (2009) 2 SCC (Cr) 1002; 2009 (3) ACC 708; AIR 2009 SC 3104; 2009 (75) ALR 638; 2009 (3) AWC 2138; 2009 (162) DLT 278; 2010 (2) KLT 802; 2009 (4) MPLJ 96; 2009 (155) PLR 22; 2009 (3) RCR(Civil) 77; 2009(6) SCALE 129; [2009] 5 S.C.R. 1098

[4] Sarla Verma case, as reported in 2009 Indlaw SC 488, paragraph 8

> *among Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system."*[5]

3. THE MULTIPLIER METHOD:

The strongest argument in favour of the multiplier method is that the method ensures uniformity and consistency in the decisions. The Supreme Court discussed it in great detail in *Sarla Verma's* caes and had laid emphasis on several earlier decisions – three in particular, viz., *Susamma*[6], *Trilok Chandra*[7], and *Charlie*[8] – in which the multipliers have been determined for the purpose of motor vehicles law. In a catena of judgments, the Supreme Court of India has decided, particularly for deaths resulting due to no-fault accidents under the motor vehicles law, that the multiplier method is the most suitable method to determine compensation in a prompt and efficacious manner.

Contrary to the multiplier method, some of the courts award lump-sum compensation, which may be punitive and exemplary in nature to achieve two purposes: send a very strong signal that such type of cases would be dealt in a very strict manner, and also make available adequate sum of money for the survivor so that life can be led in a reasonable manner in the absence of the deceased. However, awarding a lump-sum amount may bring into arbitrariness, which at times may be whimsical and fanciful, and, therefore, according to one school of thought, it is better to adopt the multiplier method which ensures a systematic calculation in an objective manner.

The Supreme Court had observed in *Susamma* case:

> *"We indicate that the multiplier method is the appropriate method, a departure from which can only be justified ill rare and extraordinary circumstances and very exceptional cases… Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up."*[9]

The multiplier method, primarily, uses two numbers – the multiplicand and the multiplier – to arrive at a number, which shall be the compensation. Typically, one of the numbers – the multiplicand – is the quantum of compensation determined for every year's loss of earning minus the amount the victim would have spent on himself, and the other number – the multiplier – is the difference between the average life, as per the life expectancy data available, and the age of the deceased minus the number of years for which he would be unproductive, and also taking into account any other risk factors of bad health, accident, etc. which would have shortened the productive age without any negative contribution of the medical negligence. Thus, the multiplier used for arriving at the compensation is much lesser than simply the difference between average age and the age at the time of suffering from medical negligence.

For instance, if the loss of earning per year is 'p', the average life of a similar person as the deceased is 'q', and the age of the deceased was 'r', then the multiplier will not be (q-r) , but much lesser than this number. Let the multiplier shall be 's'. In such a case the compensation shall be equal to [p x s] and not [p x (q – r)]. The number 's' to be used as the multiplier raises serious issues about the manner in which it has to be arrived at by the courts.

[5] Sarla Verma case, as reported in 2009 Indlaw SC 488, paragraph 8
[6] General Manager, Kerala S.R.T.C v Susamma Thomas; Supreme Court of India; 6 January 1993; Bench: M.N. Venkatachaliah and G.N. Ray, JJ.; Reported in 1993 Indlaw SC 1302; (1994) 2 SCC 176; (1994) SCC (Cr) 335; 1994 (1) ACC 346; 1994 ACJ 1; AIR 1994 SC 1631; AIR 1994 SCW 1356; JT 1993 (Supp) SC 573; 1994 (3) KarLJ 39; 1994 (1) KLT 67; 1993(4) SCALE 643
[7] UP State Road Transport Corporation vs. Trilok Chandra [1996 (4) SCC 362], 1996 Indlaw SC 2879
[8] New India Assurance Co. Ltd. vs. Charlie [2005 (10) SCC 720], 2005 Indlaw SC 252
[9] Susamma Thomas case, as reported in 1993 Indlaw SC 1302, paragraphs 16-17.

Multiplier as in Davies Case

Courts in India have preferred the multiplier method as mentioned in the *Davies case*[10]. It is a landmark and oft-cited judgment. Lord Wright in 1942 gave the following reasoning:

> *"The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency. In the case of the appellant, Mrs. Williams, I think the judge has awarded a wholly inadequate sum. There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt. It seems as if the award of 250l. was based on something like three-and-a-half years' purchase of the basic figure. This appears to me to be out of all proportion and much too low. I should, after allowing for all reasonably probable chances of the diminution of the loss, accept the figure taken by Luxmoore L.J. of 750l. as being not unfair, and I should increase the damages recoverable by the appellant, Mrs. Williams, accordingly. In that respect I should allow her appeal. Otherwise the appeal fails in her case, and it fails entirely in the case of the other appellant. I agree with the motion proposed by the noble and learned Lord on the Woolsack."*[11]

Application in Sarla Verma Case

In 2009, the Supreme Court in *Sarla Verma case*, applied the method used in *Davies case*. The case briefly is as follows. In 1988, Rajinder Prakash, aged 38 years, died in an accident with a Delhi transport Corporation bus. At that time he was working as a scientist in the Indian Council of Agricultural Research drawing a monthly salary of Rs. 3402/-and was survived by his wife, three minor children, parents and grandfather. The family filed a claim for Rs. 16 lakhs before the Motor Accidents Claims Tribunal, which used the multiplier 22 and awarded about Rs. 6 lakhs with interest. The family appealed in the Delhi High Court which used the multiplier of 13 and a different – higher – multiplicand and awarded a little more than Rs. 7 lakhs with interest. Dissatisfied with the manner the multiplier method was used by the Delhi High Court, the family appealed in the Supreme Court. After analysing the case in detail, the Supreme Court held that the multiplicand was correctly determined by the Delhi High Court, however, the multiplier should not be 13, but should be 15 instead, which increase the compensation to a little less than Rs. 9 lakhs.

The court followed the *Davies* case and did not proceed with the multiplier of 22, rather it used a much lower number, i.e., 15.

4. MEDICAL NEGLIGENCE AND COMPENSATION

Medical negligence by doctors and hospitals, once established by the trial court, very well conveys that the conduct of the medical professionals – doctors, hospital administration, other hospital staff, etc. – was not upto the mark and hence, they must be held liable for deficiency in service, as entailed in the consumer law in India.[12] What was the degree of this deficiency depends on the degree of negligence, which can either be slight, normal, or gross. If the negligence was gross, it almost borders with intentional conduct which may be even penalised under the criminal law of the country, however, under the civil law for award of compensation, the quantum has to be determined by the consumer courts.

By no stretch of imagination, the court should award a paltry sum for gross negligence. And, the same is true the other way round – exemplary compensation need not be awarded in case of slight or normal negligence.

[10] Davies and Another, Appellants v. Powell Duffryn Associated Collieries, Limited Respondents; House of Lords; 27 April 1942; Reported in [1942] A.C. 601; Bench: Lord Russell of Killowen , Lord Macmillan , Lord Wright , Lord Porter and Lord Clauson.
[11] As per Lord Wright, in Davies case.
[12] Consumer Protection Act, 1986.

Medical Negligence and the Multiplier Method

There have been arguments made by the lawyers that the same method – multiplier method – should be adopted in case of medical negligence by doctors and hospitals to bring into objectivity and also disposal of cases promptly and effectively. But, the fundamental argument that loss of human life in a no-fault motor vehicle accident and due to medical negligence of hospitals and doctors is not similar and practically are two very different issues, deserving to be dealt in different manner, and, therefore, the same method – the multiplier method – cannot be used for determining the compensation to be paid in medical negligence cases.

Nizam Institute Case

In the *Nizam Institute case*[13], the Supreme Court did not apply the multiplier method. In 1990, twenty-year old Prasant S. Dhananka, a student of engineering, was operated upon at the Nizam Institute of Medical Sciences, Hyderabad. Due to medical negligence of the hospital, Prasant was completely paralysed. Compensation was claimed, and the matter finally reached the Supreme Court. The court did not apply the multiplier method and awarded a compensation of Rs. 1 crore plus interest. The court observed:

> *"Mr. Tandale, the learned counsel for the respondent has, further, submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method."*[14]

While deciding against the multiplier method for medical negligence cases, both when a death has occurred, but particularly in a case when the victim of medical negligence has been left in a pitiable condition with no scope for improvement, the court reasoned that while determining the quantum of compensation, sympathy should not be the only guiding factor in favour of the victim. The compensation must be just and adequate, and keeping that principle in mind, one needs to consider the fact that a person who has lost almost complete control over his body, there is a feeling of helplessness and resignation for the person in the entire family. It is extremely difficult to understand their plight, and the multiplier method can never do justice in determining adequate and just compensation. The court observed:

> *"… Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the Court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of the thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned…. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity…. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself."*[15]

Kunal Saha's Case

The Supreme Court rejected the multiplier method in this case and provided an illustration to show how useless the method can be for medical negligence cases. The court wrote:

> *"The multiplier method was provided for convenience and speedy disposal of no fault motor accident cases. Therefore, obviously, a "no fault" motor vehicle accident should not be compared with the case of death from medical negligence under any condition. The aforesaid approach in adopting the*

[13] Nizam Institute of Medical Sciences v Prasanth S. Dhananka and Others; Supreme Court of India; 14 May 2009; Bench: H.S. Bedi, B.N. Agrawal and G.S. Singhvi, JJ.; Reported in 2009 Indlaw SC 1047; (2009) 6 SCC 1; 2010 ACJ 38; AIR 2009 SC (Supp) 1503; 2009 (3) AWC 2154; 2009 (1) CCC 240; 2009 (2) CPJ(Sc) 61; 2009 (3) CPR 81; 2009 CRLJ 3012; 2009 (155) PLR 1; 2009 (3) RCR(Civil) 174; 2009 (3) RCR(Criminal) 124; 2009(7) SCALE 407; [2009] 9 S.C.R. 313

[14] Nizam Institute case, as reported in 2009 Indlaw SC 1047, paragraph 116

[15] Nizam Institute case, as reported in 2009 Indlaw SC 1047, paragraphs 112-115

> *multiplier method to determine the just compensation would be damaging for society for the reason that the rules for using the multiplier method to the notional income of only Rs.15,000/- per year would be taken as a multiplicand. In case, the victim has no income then a multiplier of 18 is the highest multiplier used under the provision of Ss. 163 A of the Motor Vehicles Act read with the Second Schedule…. Therefore, if a child, housewife or other non-working person fall victim to reckless medical treatment by wayward doctors, the maximum pecuniary damages that the unfortunate victim may collect would be only Rs.1.8 lakh. It is stated in view of the aforesaid reasons that in today's India, Hospitals, Nursing Homes and doctors make lakhs and crores of rupees on a regular basis. Under such scenario, allowing the multiplier method to be used to determine compensation in medical negligence cases would not have any deterrent effect on them for their medical negligence but in contrast, this would encourage more incidents of medical negligence in India bringing even greater danger for the society at large."*[16]

On the basis of this discussion, the Supreme Court enhanced the multiplier to 30 and observed:

> *"…Therefore, estimating the life expectancy of a healthy person in the present age as 70 years, we are inclined to award compensation accordingly by multiplying the total loss of income by 30."*[17]

5. PROBLEMS AND SUGGESTIONS

The *Kunal Saha* case has raised the issues of just and adequate compensation and also the efficacy of the quantum of compensation to act as a deterrent. While discussing problems and providing suggestions for these problems, we would often be referring to the *Kunal Saha* case.

a) Mathematical Precision

It is true that compensation cannot be calculated in a perfect mathematical sense, cannot be precise and accurate, but has to be within certain broad guidelines, and within certain broad parameters. It was observed by the Supreme Court in *Sarla Verma's case*:

> *"While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation."*[18]

There is no need for the courts to even try to be mathematically precise. Often, numbers may be of very little help in determining compensation. Working in a particular band is enough and besides that it is simply mathematical jugglery, which is not going to do good to any one, particularly the victim's family.

b) Just and Adequate

The consumer courts determine the compensation. It may be the maximum which can be awarded, and depends on the discretion of the Bench as to whether it would like to send a strong or a very strong signal by awarding an extremely high and exemplary compensation or it would prefer determining the quantum in a reasonable, as well as realistic, manner taking into account inflation and the value of money at the current time, so that the decision is balanced. The former approach may be deterring in nature, whereas the latter is more reasonable and penalizes the erring party in the instant case to the limit it should be penalized.

No amount can be just and adequate in an absolute sense. It all depends on the circumstances and the context and the courts must be open to treating each case in a different manner so that the decisions are just, equitable, reasonable and prudent. There is no fixed solution.

[16] Kunal Saha case, as reported in 2013 Indlaw SC 696, paragraph 67.
[17] Kunal Saha case, as reported in 2013 Indlaw SC 696, paragraph 133.
[18] Sarla Verma case, as reported in 2009 Indlaw SC 488, paragraph 8

c) Effectiveness of Compensation as a deterrent

In the *Kunal Saha* case, in the first appearance, the amount appears to be a huge sum of money, as per the precedents in medical negligence cases and the amounts awarded by the courts in India. However, going a little bit into the details of how the compensation has to be paid will make it amply clear that besides the loss of prestige, reputation and negative publicity, it is not going to be effective and hardly going to make any difference financially. The reasons are as follows.

The hospital, along with four other doctors had been held guilty of medical negligence, and the lion's share of the compensation had to be paid by the hospital. One of the doctors had passed away during the pendency of the litigation, two other doctors had to pay a small sum of Rs. 10 lakh each and the third doctor had to pay Rs. 5 lakhs. Amounts like Rs. 5 lakhs and 10 lakhs must be far less than what they earn in a month, if not in the week. Going by the stature, reputation, popularity and extremely busy schedule of these doctors, it would not be unrealistic to assume that their monthly incomes must be in at least multiples of tens of the amount they were supposed to pay as compensation, simply by the application of doctrine of legitimate expectation.

In such a scenario, these compensations are hardly going to have any impact on these doctors and the hospital.

d) No Strait-jacket formula

The Supreme Court, in *Kunal Saha* case, very clearly mentioned that there were problems with using a strait-jacket formula for determining the quantum of compensation. It noted the problem in the following words:

> *"… this Court is skeptical about using a strait jacket multiplier method for determining the quantum of compensation in medical negligence claims. On the contrary, this Court mentions various instances where the Court chose to deviate from the standard multiplier method to avoid over- compensation and also relied upon the quantum of multiplicand to choose the appropriate multiplier … this Court requires to determine just, fair and reasonable compensation on the basis of the income that was being earned by the deceased at the time of her death and other related claims on account of death of the wife of the claimant…"*[19]

However there is a concern about the amount of compensation which needs to be paid. And, that concern, unfortunately, is not addressed by the amount the hospital is ordered to pay – less than Rs. 6 crores and interest. Knowing fully well how the corporate hospitals now function and huge amount of fee they charge – very well evidenced by the currency counting machine in the cashier section of each of these hospitals – amounts like five crores and ten crores appear to be microscopic; and, mind you, this is the price what the hospital is supposed to pay for medical negligence resulting in the death of a patient, and that too after 15 years of litigation. It must surely have factored in this uncertainty and the possibility of paying compensation in its account books. Thus in all likelihood it is going to be like spears and arrows of citizens of Lilliput aimed at Gulliver. Unimpressive and ineffective, indeed!

e) Inconsistent Precedents

For any particular case, the judges may either follow the precedents, or distinguish the instant case from the earlier decided cases, or overrule the earlier decisions, if the matter is being heard by a Superior Court or with more number of judges on the bench as compared to the number of judges on the bench in the earlier decided matter. There is a need to have settled law on the subject so that contradictory precedents are not cited. For this, the discretionary power of the presiding officers needs to be curtailed and this will not be good for the wide variety of cases and the ever-changing scenario. Thus, there is a tension between the freedom to decide on the basis of one's judgment and being bound by precedents. However, precedents can serve as a good framework and starting point and can be used in this manner. The legislature also has a role in enacting detailed laws and filling the gaps in the existing laws.

[19] Kunal Saha case, as reported in 2013 Indlaw SC 696, paragraph 97.

f) Lack of options for patients

In the *Kunal Saha* case, talking about the prestige and reputation of doctors, and impact on their practice – whether in a hospital or in a totally individual capacity – in all likelihood there is hardly going to be any difference due to lack of choices for the patients. It wouldn't be surprising if in a survey conducted to find out as to how many of their patients would not like to be treated by the same doctors after getting to know that these doctors have been penalised by the highest court of the land and have been made to pay compensation for medical negligence; the number of any such patients is abysmally low, if not zero. In all probability, these doctors, the hospital staff and patients would be discussing how whimsical and arbitrary the Supreme Court has been in awarding such huge compensation and proving guilty a godlike doctor, who always acts in the best interest of his patients. And, of course, they would be questioning the capability and competence of the Supreme Court in deciding the case of medical negligence which doubtlessly is quite complicated and only experts in that field can opine on the subject.

More options can be created by the medical services made available by the government for the masses. Also the role of Medical Council of India is important to tackle the issue and rather than simply being protectionist for the profession, it should introspect and take the right stand. Only that will help the medical professionals earn the trust of the public at large.

g) Judges lack medical expertise

There is often a thin dividing line between the three levels of negligence – slight, normal and gross – and it all depends on the entire context – which includes the place, the time, the individuals involved, the level of complication, etc. – as to where the line should be drawn and the categories decided about the levels of negligence. Judges, often in such a situation, depend heavily on expert opinion, first to establish negligence, and thereafter to decide the category of negligence. Therefore, the role of the judges in deciding the compensation is typically to take into account the opinion of experts and then decide on the basis of well-established legal principles, enacted law and precedents.

In *Kunal Saha* case, there is no denying this fact that the Supreme Court, or for that matter any court, doesn't have the competence to decide on any technical matter, but, we need to appreciate that the courts decide on the basis of legal principles after taking into consideration the opinion of experts on any particular subject. In the instant case it was on the basis of experts' opinion that the doctors and the hospital were held guilty of medical negligence. It was only a question of the compensation to be decided, which was fixed at less than Rs. 2 crores by the National commission responsible for deciding consumer protection cases, and later on enhanced more than three times by the Supreme Court of India. Thus, there should not be any cause for worry about the lack of competence of the judges of any technical subjects.

h) Exercise of Discretion

It is a double-edged sword. There is always a possibility that exercise of discretion may not be done in a proper manner, which may lead to arbitrariness. However, that is what the role of judicial officers is. They are supposed to exercise discretion in a reasonable manner keeping the relevance of their decision in mind. The problem can be very well tackled by better training of judicial officers, not only in legal principles and different branches of law, but also in the emerging areas related to human body and life. Not only traditional medical issues like liability of hospital and doctors in medical negligence cases, but several new issues like organ donation and transplant, issues of biotechnology, surrogate motherhood, euthanasia, etc. need to be deliberated upon for creating awareness. After all a judge is not a machine or programmed computer, which will always decide in a fixed manner. We would do well to remember what the Supreme Court observed in *Susamma Thomas* case:

> *"The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderable … Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it*

is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."[20]

Whatever is the method, the judges have to exercise discretion in a positive manner, looking towards the future.

6. CONCLUSION:

There cannot be any doubt that the compensation in medical negligence cases has to be just and adequate, but with the changing times and aspirations of the people, also with tremendous advancements in medical science resulting in much better diagnosis and far better treatment as in the yesteryears, it's legitimately expected by the patients and their attendants that the medical professionals need to be accountable to a certain degree, if not fully. The higher the level of hospital – specialisation, facilities available and also the cost of treatment – the higher is the level of expectation of the people. The same applies to the degree of specialisation of doctors and other medical professionals. Most of the hospitals – both government and in private sector – treat a large number of patients and must be held accountable in cases of negligence.

With the development of consumer law in the country, it is quite natural that the quantum of compensation will increase and more and more hospitals will be brought under the ambit of this law. The judicial officers, especially at the lowest level of hierarchy – the District Forum, and thereafter going up in the hierarchy, should be ready to align the quantum of compensation with the real world rather than being tied up in the theoretical concepts and unrealistic and impractical precedents. Only then the victims and their dependents will be able to get just and adequate compensation. Till then, just and adequate compensation shall remain a mirage.

[20] Susamma Thomas case, as reported in 1993 Indlaw SC 1302, paragraphs 9-11.