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Res Ipsa Loquitur

In today's world, it has become increasingly necessary for doctors to understand some basic legal jargons and dictums. In 1993, medical practice came under the purview of consumer protection act. This has negatively affected the doctor–patient relationship. In addition, litigations pertaining to medical negligence have been increasing in geometric proportion. In some of these cases, evidence by medical expert may not be necessary as medical record itself shows the negligence on the part of treating doctor. This is the famous doctrine of "res ipsa loquitur."

The first time the term "res ipsa loquitur," which literally means "the thing speaks for itself," was used was in a court proceeding demanding payment of a debt in the year 1616 in England.

Rationale

The fundamental component of the res ipsa loquitur doctrine is that the act of negligence by the doctor speaks for itself. In other words, in the absence of evidence of negligence, the act itself is the evidence. The primary purpose of the res ipsa loquitur doctrine is to provide fairness to an injured person when direct evidence of negligence is absent. In fact, where the plaintiff (patient in medicolegal cases) is in a position to produce evidence of negligence, res ipsa loquitur is not applicable.

In medical malpractice cases, the courts are generally reluctant to apply res ipsa loquitur in lawsuits involving error in diagnosis or the choice/outcome of a specific treatment.

Nonetheless, the res ipsa loquitur doctrine may still be applied in cases involving a matter of common knowledge. For example, a doctor applies a plaster cast on a patient's leg so tight that it leads to impaired circulation, gangrene, and ultimately amputation. It is obvious that such complications should not ordinarily occur, and the thing speaks for itself proving the negligence.

Main Components of this Phrase

1. The harm suffered is more likely caused by the negligence of someone
2. In medicolegal cases, it has to be fairly apparent that the doctor had breached his duty of care leading to negligence
3. And, the plaintiff (patient) should not be at fault. Obviously, a patient that contributes to the negligent act cannot use res ipsa loquitur.

There are three essentials for proving Res Ipsa Loquitur

1. Accident was in control of defendant (doctor)
2. 2. Accident does not happen in general course but happened due to negligence of the doctor
3. Defendant (the doctor) cannot give a satisfactory explanation about how it happened.

Three limitations

1. The doctor may be able to prove that he was not negligent
2. The plaintiff (patient) still has to prove the negligence
3. Maxim is not applicable to incidents in which more than one inference can be drawn.

For example, the surgeon should not leave the scalpel within the patient's abdomen during appendicectomy. If someone does it, circumstantial evidence allows jury to make an inference based on what is known. The inference is that the surgeon breached his duty of care. The incidence itself satisfies all the necessary elements of breach of duty and negligence.

Case Law

MD medicine physician fined Rs. 41 lakh for doing pleural tapping test without sonography, that too in causality section.

The Maharashtra State Consumer Disputes Redressal Commission, in its recent judgment dated 31/03/2017, gave the verdict against the doctor but absolved the hospital.

Facts in short:

1. This is the case of 2002. The wife (since deceased) of the complainant was admitted to the hospital with hepatitis. She was then examined by the doctor and discharged on medications
2. However, after about 1 month, she developed chest pain and difficulty in breathing. Initial chest X-ray was normal, but subsequently, she was diagnosed as suffering from pleural effusion
3. On next day pleural tapping was conducted in the casualty ward, and the doctor left after the procedure. But as the patient complained of giddiness, the doctor was summoned again, but unfortunately, she started deteriorating
4. The doctor tacitly admitted that it could have happened due to puncturing of the spleen by needle during tapping
5. The computed tomography scan also revealed that the needle had punctured the spleen resulting in splenic tear and profuse bleeding internally. The continued to deteriorate and died the next morning
6. Her husband filed a complaint for medical negligence claiming Rs. 87,50,000/-against damages.

Defence

1. The doctor refuted all the charges of negligence. The patient having a complex condition with jaundice,

alcoholic hepatitis, and liver ailment had lesser chances of surviving. The hospital also denied all the charges against it and submitted that as per postmortem report, there were multiple abscesses in the brain and the kidneys and generalized septicemia which contributed to the death of the patient
2. It was also argued that the doctor that the patient herself was reluctant to get admitted.

Held

1. The commission after hearing both parties and pursuing the record and going through the various case laws on the point of negligence of apex court reduced the compensation from Rs. 87,50,000/- to Rs. 41,00,000/
2. The commission observed – The courts and the consumer fora are not experts in medical science, and must not substitute their own views over that of specialists
3. The commission raised the query as to why the process of injecting a needle or puncturing the chest twice to tap pleural effusion was done casually in the casualty section of the hospital and not in intensive care unit? (ICU) Why sonography was not performed while passing or inserting the needle?
4. This omission on the doctor's part is personally blameworthy and punctured spleen of the patient and caused the death of the patient

These facts called for the attraction of well-known principle of law, i.e., res ipsa loquitur and thus no expert opinion was required.

5. The commission reiterated that the "mistake" on the part of the doctor of performing the procedure in casualty section turned to be fatal
6. Not using sonography while inserting the needle twice in a case of pleural effusion resulted in puncturing of the spleen which hastened the death of the patient.

Henceforth, the doctors will have to rethink as to which procedures are to be performed in casualty or the wards and which in ICU. Moreover, the question still remains, if the procedure is performed in ICU, whether it can lessen the chances of accusation of negligence or it would still depend on the facts of each case?

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