

Perspective :

Can forensic specialists give expert opinion in alleged medical negligence?

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New domain in career of forensic specialists of giving expert opinion in court of law related to alleged medical negligence to different specialties. It doesn't need to be a graduate in law to fight in consumer courts of law as forensic experts.

Recently after 2014 amendments in Consumer Protection Act Regulations (Procedure for regulation of allowing appearance of agents or representatives or non-advocates or voluntary organisations before the Consumer Forum), it does not require that only a lawyer can appear as representative for complainant, even doctors can give their expert opinion to prove the facts[1].

In Indian metro cities, some eminent forensic experts are running private medicolegal consultancy, charging legally for the medicolegal advice, prepare medicolegal reports, conduct audits in hospitals to prevent malpractice issues, train doctors in documentation & appear in consumer courts as forensic experts in cases of alleged medical malpractice.

Case:In 2016, NCDRC held radiologists negligent for missing out congenital anomalies in Prenatal Anomaly scans, on the basis of expert opinion from a Forensic Medicine expert, who opined it was a gross negligence of radiologists who have failed to provide reasonable skill to detect congenital malformation which was their basic duty while doing sonography[2].

Radiologist's lawyer commented that the Forensic Expert has overstepped in expression regarding ultra sound science as he is not qualified and acquainted with the technology of ultrasound. Counsel further raised objections on the expert opinion given by Forensic Expert, that, he is not a

qualified expert in radiology or sonography. Thus, Forensic Expert has given a knowingly false expert opinion to subvert the course of justice, it is in violation of the Code of medical ethics, therefore, Radiologist reserves his right to complain to the MCI against him. Also the complainant and Forensic Expert are liable under IPC chapter XI for giving false evidence. The counsel prayed to issue necessary directions for prosecution of the complainant in terms of section 195 of the CrPC[2].

NCDRC bench observed- "It appears that, the doctors are often reluctant to testify against their colleagues (as the "conspiracy of silence"), hence it is difficult to find an unbiased expert willing to testify against a negligent doctor or label the care as substandard. The opinion of Doctor, who is a Forensic Expert is acceptable in Radiologist's negligence. We are not more convinced with the three expert opinions by radiologists on behalf of radiologists, because it is silent about procedural lapses of radiologists who issued reports casually as limbs are normal. It means either radiologists had not seen it or it was wrongly diagnosed. Experts relied upon Routine OBG Scan Vs Targeted Scan, but silent about the ethical obligations of Sonologist. We would like to quote few examples, if a pathologist while doing differential WBC count from the peripheral blood smear, and if he microscopically finds malarial parasite or any abnormality; he is ethically bound to reveal it to the referring physician even if it was not asked for. Pathologist should not conceal the crucial finding for the want of charges[2].

References:

1. Consumer Protection Act Regulations 2014
2. NCDRC judgement in case of Anil Dutt & Anr. vs Vishesh Hospital & Ors. on 16 May, 2016 <https://indiankanoon.org/doc/109125621>

