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ABOUT US

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Case Diary

News Report

Aaron Fernandes, ‘Pure medical negligence’: Parents of Aishwarya Aswath slam report into her death at Perth hospital, SBS NEWS, (May, 2021) , [‘Pure medical negligence’: Parents of Aishwarya Aswath slam report into her death at Perth hospital \(sbs.com.au\)](#)

Authored By- Arav Doss

Summary Of The News Report

Aishwarya died on easter Saturday, from a disease called sepsis which is a type of bacterial infection. The Western Australia Child and Adolescent Health Services (CAHS), which is a part of the Perth’s children hospital, had a review panel to conduct an inquiry into her death and treatment and provided the family with and report regarding the same. Her parents claimed that this report did not give a proper examined and detailed report about their daughter’s treatment and condition, during her time in the hospital. They also said that this happened due to the negligence on the part of the doctors and medical staff and if she had received proper medical treatment, things would have been different.

On 3rd April, Aishwarya (7 years old) was suspected of having a fever and was brought to the Perth children hospital’s emergency department. After going around asking for help for quite some time, a nurse finally checked her condition. The parents were not happy with the way the nurse assessed her condition and the reasons she gave for her temperature and heart rate being on the higher end also did not satisfy the parents. Mr. Chavittupara and Ms. Sasidharan were very anxious the whole time. When they felt their daughters condition worsening, they immediately went to search for help and find a doctor to look after condition. She died within minutes of seeing the doctor. The parents felt that their pleas and cries for help were ignored by the medical staff.

The review panel also revealed that Aishwarya had not received proper treatment and the medical staff also failed to recognize her serious condition and this caused a delay in medical intervention which could have proved to be crucial to her life. The lack of cultural awareness, and incomplete triage were some of the reasons which may have contributed to her death. Mr. Roger Cook (the western Australia health minister) publicly apologized to the family for their loss and also said that the health system had failed them and there should be some changes made. The review panel gave the hospital some recommendations to ensure such events do not occur in the future. The government also did not confirm if the parents would

receive compensation for their loss. The parents also wrote to the health minister to implement a system called 'Aishwarya's care' where the patients in the emergency departments, safety and proper medical treatment would be ensured.

Torts Involved

The tort involved in this news report is negligence. In simple terms it means being careless. Negligence can be defined as breach of a legal duty and the failure of exercising care that a reasonable man would have performed in that situation. It can be of two types-civil and criminal. Medical negligence refers to the misconduct of the medical staff and breach of their duty of care which causes harm to their patients.

Essentials And Principles Of Negligence Are:

- **Duty of care (towards the plaintiff):** under negligence, the defendant has a duty towards the plaintiff, to exercise reasonable care while performing an action. He has a legal duty to take care and if he is careless then he will be liable to pay compensation for the damages caused to the plaintiff.
- **Breach of duty:** under the law, this refers to the failure to perform an already established duty by the defendant due to his negligence. The plaintiff must prove that the defendant not only owed him a duty of care and also prove that he violated it.
- **Damages:** for this to be proven the plaintiff should have suffered a legal damage/loss due to the negligence of the defendant and him breaching the duty of care owed to the plaintiff. If proven in court, the defendant will be liable to pay compensation for the damage suffered by the plaintiff.
- **Actual cause/cause in fact (causation):** in this, the plaintiff has to prove that the damages suffered by him due to the defendant's breach of duty of care was the actual cause for the loss suffered by the plaintiff.
- **Proximate cause:** in simple terms this refers to the set of actions/events that is the primary cause of the injury/harm suffered. The plaintiff needs to prove that the defendant's negligent actions was the cause of the harm/loss suffered by him. Under negligence, the defendant can be held liable for the injury only if he could have foreseen the consequences of his actions. This is also called as the remoteness of damages under negligence.
- **Res ipsa loquitur:** this is a Latin term which means 'the thing speaks for itself'. Under this if the plaintiff gives evidence and proves that defendant's negligent actions and breaching of his duty to take care were the reasons for the injury/loss suffered, then it comes up to the defendant to prove that he was not negligent in his actions.

Landmark And Recent Case Laws In Different Jurisdictions

The case of Kunal Saha vs AMRI¹ (advanced medical research institute) which is also known as the famous Anuradha Saha case is landmark judgement in medical negligence. In this case, Dr. Kunal Saha filed a complaint against 3 doctors of AMRI hospital in Kolkata for his wife (Anuradha Saha), who was suffering from a drug allergy and died at age of 36, due to the doctor's negligence in prescribing medicines which ultimately caused her death later on. After investigating against the doctors, the supreme court gave a historic judgment in it was held that compensation for damages should serve the purpose of providing adequate financial assistance to the victim's family in order to fill the hole created by the wrongful death and the other purpose is to prevent such events of careless behaviors by other medical staff members and hospitals from happening in the future. The doctors and the hospital were held liable to pay a compensation of 5.94 crores which became 11 crores rupees along with interest. This is also the highest amount of compensation that has been given for a case of medical negligence.

The case of Shilaben Ashwinkumar Rana vs Bhavin K. Shah and another² (2019) is a recent case on medical negligence. In this case, due to the negligence of the doctor, a baby which is just 2 and a half years old goes into a vegetative state after suffering from mental and physical disability, just after a surgery. The mother filed a complaint and wanted to be compensated for the injury in order to ensure the protection and proper treatment of her baby during its vegetative state. The supreme court held that due to medical negligence and the careless attitude of the doctors even after knowing the complications which arise post-surgery (which happened to be common in such cases) they had not taken reasonable care and the necessary precautions beforehand. Thus, the supreme court held them liable to pay a compensation of 17 lakh rupees to the grieving family.

¹ (2009) 9 SCC 221

² MANU/SC/0468/2019