

IMMUNITY FROM LIABILITY ARISING OUT OF MTP COMPLICATIONS –LANDMARK JUDGMENT

One of the common procedures carried out by Gynecologists is Medical Termination of Pregnancy. This is regulated by the MTP Act 1971. There are a number of known and well-documented complications which can follow MTP. Since MTP is a commonly performed operation, reports of such complications are more common. This is related to the sheer volumes of the procedure.

Complaints, patient allegations and litigation in connection with these complications are frequently encountered. A variety of judgments have been reported in connection with these complaints. Some have been in favour of the patient and some in favour of the accused doctor. The interpretation of the judge in a particular case and of course the manner of presentation of the defence, have been the deciding factors in the final judgment.

A recent judgment delivered by the Consumer Disputes Redressal Commission, State of Maharashtra, has broken new ground and can be considered as a landmark judgment. All Gynecologists must make note of this judgment as it pertains to a common area of litigation and is of great relevance to them

This judgment was delivered on as recently as 20th July 2005. A summary of the case and judgment follows.

A 25-year old female went to a lady Gynecologist for terminating a pregnancy of 8 weeks duration. She also wanted a tubectomy to be performed. This was duly performed by suction and curettage and open tubectomy on 14th July 1995. A fortnight later the patient visited the doctor with complaints of vomiting and abdominal pain. On clinical examination it was found that the pregnancy had persisted and sonography was advised. The USG confirmed a 10-week pregnancy.

The Gynecologist informed the patient about the retention of the pregnancy and advised re-termination of the same with an offer to re-operate free of charge, including cost of medicines. She also explained to the patient and her husband that they were free to select another Gynecologist for re-terminating the pregnancy, the cost of which would be reimbursed by the hospital.

However, the couple decided to continue the pregnancy and delivered a baby on 9th Jan 1996.

Meanwhile, the patient filed a complaint with the District Consumer Forum alleging negligence on the part of the doctor and claimed damages of Rs. 4,99,000 /-

Before filing a reply to the complaint, the MTP Act 1971 was studied at great length. A section that attracted notice was Section 8. The section reads:

“Protection of action taken under good faith

No suit – or other legal proceedings shall lie against any registered medical practitioners for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act”

This section had never been hitherto used as a defense.

Accordingly , it was decided to raise this issue before the District Consumer Forum.

The doctor made an application objecting the jurisdiction of the Forum to adjudicate on the complaint in view of Section 8 of the MTP Act.

Both sides argued the matter. The doctor argued thus:

She had taken every care when she operated the patient for MTP and tubectomy and she had acted and done everything in good faith. Hence, in view of section 8 of the MTP Act 1971 no suit or legal proceeding could lie against her. Thus the present complaint is not tenable and this Forum has no jurisdiction to try this complaint. The definition of good faith as defined in Sec 3 (22) of the General Clauses Act and the observations of the Supreme Court in IMA Vs V.P.Shantha was also brought to the notice of the Forum. Definition of good faith: “ A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not”

The doctor also gave the following medical explanation: The failure of medical termination of pregnancies performed in the first trimester in spite of optimum care and caution and use of modern techniques and instruments are recorded by medical science that they are freaks of nature and beyond human control.

While performing MTP in or around 8th week the embryo is hardly 14 to 21 mm in length and about 10 gms in weight. It is flaccid and cannot be differentiated from the accompanying chorion. Because of its smallness such an embryo can at times escape suction and continue to grow in the uterus. This is a freak of nature .Its occurrence is accepted by Medical science.

However, after hearing both sides, the application of the doctor was rejected by the Forum. It was thus contended that despite what was stated in the MTP Act, the Forum did have a jurisdiction to adjudicate the complaint.

This judgment was challenged in the higher Forum namely the State Commission.

The matter was ably argued by Advocates Shailesh and Yogesh Naidu. The order of the lower Forum was quashed and set aside and a ruling was given in favour of the doctor. Since this has implications for all Gynecologists for future cases, a gist of the judgment is given herewith.

Salient points of the judgment:

1. It is an admitted fact that the doctor is an experienced Gynecologist and Obstetrician. **The hospital of the doctor is recognized by the Govt. of Maharashtra under the MTP Act 1971.**
2. It is also a fact that there was failure in terminating the pregnancy medically. The pregnancy continued and ultimately the complainant delivered a baby.
3. In earlier days doing an abortion was a crime under the IPC and both the mother and the abortionist could be punished. However, in spite of the law illegal abortions were being carried out and many mothers were losing their lives or suffering morbidity. Hence the MTP Act was enacted by the Government and came on the Statute books on 10-8-1971.
4. It is admitted that the doctor is a registered medical practitioner who possesses recognized medical qualification as defined in the IMC Act 1956
5. Section 8(1) of the MTP Act provides that notwithstanding anything contained in the IPC a Registered Medical Practitioner shall not be guilty of any offence under that Code or any other law if any pregnancy is terminated in accordance with the provisions of the MTP Act
6. In the present case, the doctor carried out the operation without any apparent negligence and had taken reasonable care for the interest of the patient. "Action was done in good faith and therefore we are of the opinion that no suit or any other legal proceeding shall lie against the appellant who is a registered medical practitioner for any damage caused or likely to be caused by anything done in good faith or intended to be done under the MTP Act." **The Forum agreed with the following argument of the doctor's advocate: " The law recognizes the necessity and validity of conferring privileges and immunities from legal action on certain functionaries in the interest of public welfare. The maxim ' *salus populi est suprema lex* ' --public welfare is the highest law—is very well known. The MTP Act 1971 is social reform legislation with the obvious object of controlling the growth of population of multiplying millions. The provisions of Section 8 of the MTP Act therefore confer a privilege and immunity on the Registered Medical Practitioner It is available only to a Registered Medical Practitioner and that too for anything done or intended to be done under that Act. But once these requirements are established, the privilege and immunity fro all sources of legal proceedings is express, absolute and complete. It may also be noted that this immunity is conferred by law to promote medical termination of pregnancies in the larger interests**

of society and therefore to protect the registered medical practitioners from an occasional failure and other complications, which are facts of life. To show that such failures are an accepted fact in medical science is borne out by medical literature.

7. The judgment also made reference to a study conducted by MTP Committee of FOGSI. Data on MTP from five different centers had been analysed to determine the incidence of failed MTP and the method of subsequent management of these cases. The study comprised 11,590 cases of which 10,646 (91.86 %) were in the first trimester and 944 (8.14%) were in the second trimester. The average incidence of occurrence of failure of MTP in the first trimester was 9.4 % as compared to 2.43 % in the second trimester, “THEREFORE 100%TERMINATION OF PREGNANCY IS A MYTH.” (Judgment).
8. “We therefore hold that the impugned order passed by the forum below suffers from illegality. We hold that the Consumer Complaint filed by the complainant is not maintainable in law. The complaint filed by the consumer is dismissed.”

The perseverance of the Gynecologist, Dr (Mrs.) Gayatri Bhatwal, who is an Associate member of AMC, in pursuing the case, which took 10 long years to come to a conclusion, is to be commended. So too, the skill and commitment of Advocates Shailesh and Yogesh Naidu and Adv. G.V.Gujrathi must be appreciated. AMC assisted the member right from the commencement of the case gave all the inputs that were needed.

Gynecologists can quote this judgment in a similar case against them.

The details of the case are:

Consumer Disputes Redressal Commission, Maharashtra State

Appeal No. 287 of 1997 in Complaint No. 56 of 1995 District Forum Dhule.

Dr.(Mrs.) Gayatri Bhatwal Vs Smt. MangalaShirish Dhake

Judgment delivered by Justice Mr.B.B.Vagyani

Advocate for Appellant: Mr. Y.C.Naidu