

# SC sets 11-point norm on medical negligence

## Consumer Act Not Meant To Instil Fear In Docs: Apex Court

Dhananjay Mahapatra | TNN

**New Delhi:** Consumer Protection Act should not be a "halter round the neck" of doctors to make them fearful and apprehensive of taking professional decisions at crucial moments to explore possibility of reviving patients hanging between life and death, Supreme Court said on Wednesday.

"Doctors in complicated cases have to take chance even if the rate of survival is low. A doctor faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act," said a bench comprising Justices Dalveer Bhandari and HS Bedi dismissing a CPA complaint against Batra Hospital and Medical Research Centre here.

One Kusum Sharma had claimed Rs 45 lakh compensation against the hospital for the death of her husband RK Sharma — a senior operations manager in Indian Oil Corporation. The National Consumer Disputes Redressal Commission (NCDRC) had dismissed her complaint.

Finding such CPA complaints against doctors on the rise and in many cases these being frivolous, the bench said, "Courts have to be extremely careful to ensure that unne-



### SOME PROTECTION

- Negligence is a breach of duty or an act which a prudent and reasonable man will not do
- Negligence to be established must be culpable or gross and not based upon error of judgment
- Professional is expected to bring a reasonable degree of skill and knowledge along with a reasonable degree of care but neither the highest nor the lowest degree of care and competence
- A doctor would be liable only where his conduct fell below that of the standard of a reasonably competent practitioner in the field
- Difference of opinion cannot be cited as negligence
- Just because a professional looking at the gravity of illness had taken a higher element of risk to redeem the patient out of his suffering which did not yield the desired result, it may not amount to negligence
- Merely because a doctor chooses one course of action in preference to the other one available, he would not be liable if the action chosen by him was acceptable to the medical profession
- It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck
- It is our duty not to harass or humiliate medical professionals
- Doctors are entitled to get protection

essarily, professionals are not harassed and (or else) they will not be able to carry out their professional duties without fear." "It is a matter of common knowledge that after some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tend-

ency which is closely linked with the desire to punish," said Justice Bhandari, writing judgment for the bench.

Tracing development of the law in major cases of negligence in India and other countries, the bench collated the guideline for the courts to adjudicate complaints against doctors