is concerned has also been noticed by Court. Court has proceeded to determine the question of negligence on the part of the respondents herein principally on the premise that even if the opinion of the pro-steroid group is followed, the respondents have failed and/or neglected to even act strictly in terms of the treatment protocol laid down by them. The opinion of the anti-steroid group appears to be more scientific and structured but the same by itself, Court is conscious of the fact, would not lead Court to the conclusion that the respondents are guilty of gross negligence. There may well be a difference of opinion on the course of action to be adopted while treating a patient of TEN, but the treatment line followed by Dr. Mukherjee which entailed administration of 80 mg of Depomedrol injection twice is not supported by any school of thought. The treatment line, in this case, does not flow from any considered affinity to a particular school of thought, but out of sheer ignorance of basic hazards relating to use of steroids as also lack of judgment.[1]

26. **Medical negligence—Not giving necessary and timely treatment—Hospital authorities liable to compensate.**—The mechanical ventilator could not be used on the patient because of the possibility of it being infected is also not sound as enough material is produced to show how the mechanical ventilator after use with any patient can be properly disinfected and sterilized before next usage. In any case there does not seem to be any logic in asking the patient who has reached a critical stage in his life to go to another hospital in different city which is at least few hours away. Dr. Bhupinder Singh in his cross-examination has clearly stated that it is necessary to put the patient on mechanical ventilator in the coming three to four hours. Obviously the hospital authorities failed to implement these recommendations and only to give lame excuses as to why mechanical ventilator in their own hospital could not be spared. This amounts to sheer negligence as they allowed the patient to sink from critical condition to fatal condition by not giving the necessary and timely treatment as they clearly shirked their own responsibility. The patient was grossly hypoxic and was finding difficulty in breathing, his oxygen saturation was 82% but despite this critical condition no chest x-ray was ordered and no arterial blood gases analysis was done which is a must in such a critical condition. It is only at 7.25 p.m. the patient was advised arterial blood gases analysis since he had developed Acute Respiratory distress Syndrome. Still he was not put on artificial ventilation which was rightly advised by the opposite parties themselves. Had they done this earlier, the eventual fatal ending could have been completely avoided. The patient was discharged forcibly although and sent way knowing fully well that he was in a critical condition and also having facilities available in their premises in Tagore Heart Institute which has mechanical ventilator and opposite parties did not consider giving the necessary treatment which was a required emergency treatment.[2]

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1. *Malay Kumar Ganguly* v. *Sukumar Mukherjee and others,* AIR 2010 SC 1162.
2. *Tagore Hospital and others* v. *Harnam Singh and others,* 2008 (3) ALJ (NOC) 720 (NC).

of medical negligence based on its drawing an adverse inference of non-production of medical record relating to sterilisation operation by the appellants.[1]

36. **Medical negligence—Failure of tubectomy/sterilization operation.**—The plaintiff has specifically pleaded and proved that her conception was due to failure of tubectomy/sterilization operation. Though the appellants in their written statement have stated that there was no negligence on the part of the doctor who performed the operation, but no evidence was led in this regard. Respondent No. 4 who performed the operation even did not choose to file separate written statement denying his liability or negligence in conducting the operation. Respondent No. 4 was the best person to comment on the failure or success of the operation. Though, in the written statement, it is the specific case of respondents that a woman can conceive even after sterilization operation due to spontaneous recanalization of ligated tube, but there was no expert witness produced by the respondents. Thus, the respondents have miserably failed to prove that there was no negligence in performing the operation.[2]

37. **Medical negligence—Patient suffering from Toxic Epidermal Necrolysis (TEN)—Doctors and hospital were negligent.**—In *R.D. Hattangadi* v. *Pest Control (India) (P) Ltd.*,[3] the Supreme Court observed :—

> "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters *i.e.* on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, *i.e.*, on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

The Commission must, therefore, while arriving at the adequate compensation bear in mind fall these relevant facts and circumstances.[4]

1. *Hasmukh F. Prajapati and another* v. *Shashikalaben*, 2007 (1) CPR 294 (NC).
2. *State of Haryana* v. *Sudesh*, AIR 2009 (NOC) 1385 (P&H).
3. AIR 1995 SC 755 : 1995 AIR SCW 243; *B.T. Krishnappa* v. *D.M., United India Insurance Co. Ltd.*, AIR 2010 SC 2630.
4. *Malay Kumar Ganguly* v. *Sukumar Mukherjee and others*, AIR 2010 SC 1162.

34. Doctor not attending the patient on Saturdays and Sundays—Patient not serious—No deficiency.—When Amit was admitted in the hospital under the care of Dr. Nathan, in three days he visited him only thrice after a gap of 24 hours. No joint consultation was held by Dr. Nathan either with Dr. Deshmukh or Dr. Pai or with both. All these three doctors were consultants in the hospital Dr. Nathan was deriving his knowledge from nothings made by the doctors on the hospital record which are substitute for personal discussion and particularly notings do not record everything. There appears to us no justification for Dr. Nathan not to visit Amit in the morning of 8.1.92 when complainant was frantically telling the doctors and nurses on duty to call Dr. Nathan. Condition of Amit had worsened by 12 O'clock on that day. He was in the hospital under the care of Dr. Nathan Dr. Nathan here failed in his duty to look after Amit property. Then on 8.1.1992 he left Amit at 6.30 p.m. when he knew that Amit was dying and that time his presence was all the more necessary. Complainant baseeched him to stay on and look after his son. It was rightly observed by the State Commission that it is the duty of medical practitioner to make all efforts till the last moment to save the patient. As noticed above Dr. Nathan does not tell us what was the grave urgency for him to leave Amit at that stage and to go elsewhere. Dr. Nathan does not explain as to why he had been changing medicines one after the other so suddenly and why he did not consider the side effects of the medicines which he was prescribing. State Commission has held that it was the wrong medicines given by Dr. Nathan to Amit which aggravated his health condition inasmuch as he started getting more convulsions. If according to Dr. Nathan Amit died of encephalitis which is a notified disease why authority was not altered and why post mortem was not conducted. In National Commission's view, State Commission rightly came to the conclusion that Dr. Nathan failed to take reasonable care which a medical practitioner will take of his patient in the circumstances of the present case. Dr. Nathan has failed to discharge the burden placed on him as to why Amit who walked into the hospital under his care for treatment of fits came out dead, having died of septicemia with viral encephalitis. Dr. Nathan disowns insertion of Ryle's tube to Amit. He says he was not consulted, Dr. Pai also does not say of his having given any instructions for Ryle's tube. Then the Ryles tube was inserted by doctors and the staff in the absence of Dr. Nathan. Hospital did not take any steps to treat the bed sore which developed and it was left to father Amit to but a nycil powder and to treat the bed sore on the body of his son according to his own judgment and common sense. Amit was unconscious since 6.1.1992 and could not control his physiological activities and was unable to control his throat secretions from entering the air passage trachea and finally to the lungs because of which lungs got infected. It was completely avoidable situation if the attending doctor at the hospital had taken proper care to drain throat infection. The fact that there was oral secretion and resultant lung infection. The fact that there was oral secretion and resultant lung infection was borne out by the affidavit of Dr. Pai Hospital here failed in its duty. Bed sore developed on account of lack of proper medical care. If medical care had been proper bed sore would not have been there. If a patient is unconscious he

87. Reasonable care—Reasonable degree of skill and care taken—No negligence.—The main criteria to be seen is whether the defendant's conduct was reasonable in all circumstances of the case. After perusal of the material on record and evidence brought forward, National Commission finds that the conduct of the opposite parties was more than reasonable and the level of care was as could be expected from a professional, exercising reasonable degree of skill and knowledge. The doctors are expected to exercise reasonable amount of care which in this case was exercised by the opposite parties.[1]

88. Reasonable degree of care—Assessment of.—Patient given injection by O.P.—Vomited blood—Contention that no blood transfusion or endoscopy done—Transfusion was not required as patient already have haemoglobin of 10.5 gm%—And Endoscopy could not have been done till time patient was hanodynamically stable—No medical negligence proved—Appeal dismissed.[2]

89. Recurrence of cancer after seven years—No case of negligence on the part of the opposite parties.—The provisional diagnosis of Fibro Adenoma (meaning non-cancerous lump) quite common in women below the age of 40. But O.P. No. 1 took the precaution of immediately sending the extracted lump for Histopathological examination. This examination, however, revealed that the removed lump was cancerous. Some material has been brought on record to show that cancer has recurred in the complainant in 2006 on examination at the All India Institute of Medical Sciences, Delhi. The fact that the cancer has recurred after several years cannot be held against the opposite parties in this case. As seen from the report of the Histopathological test at Rajiv Gandhi Institute of Cancer, done within 10 days after the first operation, the entire cancerous tumor was removed in the first instance itself. It is unfortunate that some recurrence of cancer is seen after seven years but such recurrences are not uncommon. National Commission, therefore, does not see any case of negligence on the part of the opposite parties who have taken adequate and timely care of the complainant as per the medical practices. Hence, the complaint is dismissed.[3]

90. Right of the patient to be informed.—The patients by and large are ignorant about the disease or side or adverse effect of a medicine. Ordinarily the patients are to be informed about the admitted risk, if any. If some medicine has some adverse effect or some reaction is anticipated, he should be informed thereabout. It was not done in the instant case.[4]

In *Sidaway* v. *Board of Governors of Bethlem Royal Hospital and the Maudsley Hospital*,[5] the House of Lords, *inter alia* held as under :—

1. *Gopi Ram Goyal and others* v. *National Heart Institute and others*, 2001 NCJ 363 (NC) : 2001 (2) CLT 442 : 2001 (2) CPR 41.
2. *Paulrajan (Mrs.) and another* v. *KHM Hospital and another*, II (2007) CPJ 13 : 2007 (1) CPR 427 : 2007 (2) CLT 11 : 2007 NCJ 627.
3. *Kamla Gupta* v. *Shardendu Bali and others*, AIR 2008 (NOC) 948 (NC).
4. *Malay Kumar Ganguly* v. *Sukumar Mukherjee and others*, AIR 2010 SC 1162.
5. (1985) All ER 643.