PETITIONER:
POONAM VERMA

Vs.

RESPONDENT:
ASHWIN PATEL & ORS

DATE OF JUDGMENT: 10/05/1996

BENCH:
AHMAD SAGHIR S. (J)
BENCH:
AHMAD SAGHIR S. (J)
KULDIP SINGH (J)

CITATION:
1996 AIR 2111 1996 SCC (4) 332
JT 1996 (5) 1 1996 SCALE (4)364

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. SAGHIR AHMAD

"Similia Similibus Curantur" (Like Cures Like) is the basis of a system of therapeutics known popularly as Homoeopathy. It is based on the premise that most effective way to treat disease is to use drugs or other agents that produce the symptoms of the disease in healthy persons. This theory had its origin in or about 460 B.C. when the Greek physician, Hippocrates, noted the similarity between the effect of some drugs and the symptoms of the diseases they seemed to relieve. It was, however, in the late 18th Cantury that this theory was tested and popularised by German Physician, Christian Friedrich Samuel Hahnemann as a new form of therapeutic treatment after six years test study of scores of drugs on himself and others. Ultimately, in 1796, he published his findings in a leading Medical journal under the caption "On a New Principle for Ascertaining the Curative Power of Drugs which set in motion a process of continued research in all directions including its Pharmacology with the result that Homoeopathy is taught today as a positive science in various Medical Colleges all over the country.

2. Respondent No. 1 pursued a 4 years' course in Homoeopathic Medicine and Surgery and after being declared successful in the Examination conducted by the Homoeopathic Medical College, Anand, Gujarat, he was awarded a Diploma in Homoeopathic Medicine and Surgery on the basis of which he was registered as a Medical Practitioner in 1983. Initially, he joined a private nursing home at Bombay where he worked, as he claims, as Chief Medical Officer from 1983 till he opened his own private clinic in 1989 and took up private practice.

3. Pramod Verma, husband of the appellant, was Sales Manager in M/s Encore Marketing P. Ltd. where the last salary drawn by him is said to be Rs.5,700/- out of which he

maintained his family comprising of himself, his wife and two children besides supporting the aged parents.

4. On 4th of July, 1992, Pramod Verma, who complained of fever was examined at his residence by Respondent No.1 (Dr. Ashwin Patel) who kept him on allopathic drugs for viral fever up to 6th July, 1992 and, thereafter, for typhoid fever. When condition of Pramod Verma deteriorated, he was shifted to Sanjeevani Maternity and General Nursing Home of Dr. Rajeev Warty (Respondent No.2) as an indoor patient on 12th July, 1992. This was done on the advice of Respondent No. 1. Verma received treatment there till the evening of 14th July, 1992 when he was transferred to the Hinduja Hospital in an unconscious state where, after about four and a half hour of admission, he died.

5. Appellant, thereafter, filed (on 14.8.92) Original Petition No. 184 of 1992 before the National Consumer Disputes Redressal Commission (for short, 'commission'), at New Delhi praying for compensation and damages being awarded to her by Respondents 1 and 2 for their negligence and carelessness in treating her husband (Pramod Verma) but the Commission by its judgment and order dated 8.11.1994 dismissed the petition. It is this judgment which is challenged in this appeal.

6. It appears that in the claim lodged before the Commission it was set out by the appellant that Respondent No. 1 was negligent in administering strong antibiotics to Pramod Verma initially for the treatment of Viral Fever and subsequently for Typhoid Fever without confirming the diagnosis by Blood Test or Urine Examination. It was also set out that Respondent No. 1 was not qualified or even authorised to practise in Allopathic System of Medicine and prescribe allopathic drugs and, therefore, his lack of expertise in the Allopathic System of Medicine was responsible for deficiency in the treatment administered by him.

7. Negligence imputed to Respondent No. 2 is that Pramod Verma, immediately on his admission in the Nursing Home, was put on intravenous Glucose (Dextrose) drip without ascertaining the level of Blood Sugar by a simple Blood Test. This was said to be primarily responsible for constant and steady deterioration of Pramod Verma's condition, but Respondent No. 2 continued to assure the appellant that Pramod Verma would soon recover and there was no need to shift him to a better equipped Hospital. It was, however, in the evening of 14th July, 1992, that Pramod Verma who was already in an unconscious state, was shifted to Hinduja Hospital on the advice of Respondent No. 2.

8. Both the Respondents filed separate counter-affidavits in which they denied the allegation of negligence made against them and contended that they had taken all due and reasonable care to cure Mr. Verma or the ailment from which he suffered. They contended that there was no deficiency in service nor was there any negligence on their part.

9. The exact pleas raised in defence by Respondent No.1 which have been set out by the Commission in its judgment under appeal, are given below:

> "It has been submitted by opposite party no. 1 that he has undergone an integrated course of study in both the Homeopathic and Allopathic systems of medicine and was awarded the D.H.M.S. Diploma after his having passed the final examination at the end of a four year course conducted by the Homeopathic

Medical College, Anand, Gujarat. Exhibit Annexure R-1 is a copy of the said diploma and it shows that the said diploma had been awarded after the candidate had been examined inter alia in the following subjects: Anatomy Physiology, Pathology, Forensic Medicine, surgery, Practice of Medicine, Hygiene, Midwifery and Gynaecology. Opposite party no. 1 has stated in his counter affidavit that during the final year of the study in the Homeopathic Medical collage, Anand he had been given training in the Anand Municipal Hospital and also another private nursing home in Anand for a period of six months. Opposite party no. I was thereafter enrolled as a Registered Medical Practitioner in the states of Gujarat and Maharashtra with Registration numbers G649 (Gujarat) and 10197 (Maharashtra). Opposite party no. 1 has denied the allegations of the complainant that he is not qualified, competent and authorised to practice the Allopathic system of Medicine. He has submitted that he used reasonable degree of skill and knowledge in treating the complainant's husband and had taken reasonable degree of care of the patient while he was under his treatment.

It is further submitted by opposite party no. 1 in his counter that after the completion of his studies and obtaining the diploma, he had worked as Chief Medical Officer at a well known Allopathic clinic by name, Patel Surgical & Nursing Home, Andheri, Bombay from 1983 to 1990 and he had gained very good experience in examining, diagnosing and treating the patients with complaints of various types of sickness and in prescribing necessary Allopathic medicines. It is also submitted by opposite party no. l that late Mr. Pramod Verma and his family had been taking Allopathic treatment from him for the sickness of the members of the family ever since they moved into the colony about one and a half years prior to July, 1992 and he had been functioning as their family physician.

According to opposite party no. 1, Mrs. Poonam Verma came to his clinic on the evening of 4th July, 1992 and requested him to see her husband at her home. Accordingly,

opposite party no.1 made a house visit and examined Mr. Pramod Verma in the evening of 4th July, 1992 and on such examination it was found that Shri Verma had fever. Thereupon he prescribed :
1) cap. Ampicillin (500 mg.- four times a day)
2) Tab. Paracetamol (500 mg. - 3 times a day)
3) Tab. Diavol (2 times a day) and
4) Tab B. Complex (2 times a day)
Opposite party no. 1 has stated that he gave the above treatment as he felt it may be a case of viral fever which was then very much prevalent in the locality.
Thereafter on 6th July, 1992, Mrs. Verma called opposite party no. 1 again to see her husband and hence he went to examine Mr. Verma at his house on that day in the evening. It was found that Shri Verma had mild fever and since the fever had continued for the third day, opposite party no. l states that he advised Mr.Verma to undergo pathological tests, namely, blood test & urine examination etc. Since enteric fever was prevalent at that time in the locality in question (Asha Nager) and neighbouring localities of Bombay, opposite party no. 1 prescribed Tab. Quintor (500 mg. 2 times a day for 2 days) in the place of Cap. Ampicillin. It is stated in the counter affidavit that Quintor is a broad-spectrum antibiotic which is active against the broad-spectrum, of gram negative and gram positive bacteria including Enterbacter. According to opposite party no. 1, Mr. Verma thereafter came to his clinic on 8th July, 1992 and on examining him, opposite party no. 1 found that the was not having any fever. Since there was no other complaint also, opposite party no. 1 advised Mr. Verma to continue the same treatment for another two days, i.e. upto 10th July, 1992. It is further averred in the counter affidavit that on 10th July, 1932 Mr. Pramod Verma again came to the clinic of opposite party no. 1, he had no fever but complained of back-ache. Thereupon opposite party no. 1 advised him to continue the same treatment as before and added a pain killer Tab. Ibuflamor MX 2 times a day for two days . He also gave him an injection Diclonac (3 cc.1 I/M (Intra-Muscular) to the patient. Subsequently, at about

10.30 p.m. on the night of 11th July, 1992, the complainant requested opposite party no. 1 to visit her residence to see her husband. Opposite party no. 1 thereupon went there and examined late Mr. Verma. It was found that he had again developed mild fever and was complaining of pain in the shoulder. Opposite party no. 1 then prescribed for him Tab. Vovaron 1 twice daily and Tab. Neopan plus Cap. Becosules 1 twice daily in addition to Quintor and Ibuflamor tablets which he was already taking. The Intra-Muscular injection of Diclonac (3 cc.) was also given to the patient. lt is the definite case of Opposite party no. 1 that he once again advised Mr. verma to get pathology investigations done for blood count, E.S.R., urine routine and widal test and told him to meet him with the investigation reports.
On the next date - 12th of July, 1992 at about 1 p.m. Mrs. Verma came to the residence of opposite party no. 1 and requested him to see Mr. Verma at their residence. Thereupon opposite party no. 1 visited Mr. Verma at his home and examined him. On clinical examination it was found that he had mild fever and that his blood pressure was 90/70 mm. of Hg. On the patient being asked about the reports of the pathological investigations, opposite party no. l was informed that Mr. Verma had not got them done. Thereupon opposite party no. 1 advised the complainant to get her husband admitted to some physician's nursing home of their choice for examination, pathological investigations and further management. It is the case of opposite party no. 1 that at that time, Mrs. Verma herself mentioned the name of Dr. Warty (opposite party no. 2) and suggested admission of the patient into his Sanjeevani nursing home saying that she knew Dr. Warty quite well because she had earlier been admitted for her delivery in Dr. (Mrs.) Warty's Maternity Home. Opposite party no. 1 agreed to the said suggestion and gave a medical note setting out the treatment that he has so far been administering to the patient for being shown to Dr. Warty. The complainant's allegation that opposite party no. 1 had

prescribed strong antibiotics without conducting any pathological investigations is strongly refuted by opposite party no. 1 as incorrect and untrue. He submitted that on the contrary he had specifically advised the deceased Mr. Pramod Verma as early as on 6th July, 1992 to undergo pathological tests and on finding that the tests had not been got done till then this advise was reiterated on the night of 11th July, 1992. But, for reasons best known to himself, Mr. Verma ignored the said suggestion also and did not get the investigations done. When it was found in the after noon of 12th July. 1992 that the patient was not cooperating in getting the investigations done, opposite party no. 1 advised the complainant to get her husband admitted to some physician's nursing home for pathological investigation and further management as it was felt by opposite party no. 1 that it would not be prudent or correct to proceed with the treatment of the patient without getting the requisite pathological investigation done.

Opposite party no. 1 has submitted that the treatment administered by him to late Pramod Verma was correct in every respect and there was no negligence, carelessness or deficiency of any kind on his part in relation to the said treatment given to the deceased Shri Verma during the period 4th July, 1992 to 12th July, 1992.

Respondent No.1 was examined on oath by the Commission, which was keen to know his qualifications and experience in Allopathic System of Medicine. His statement was recorded in question - answer form and the relevant questions and answers given by Respondent No. 1 are set out below:

Mr. Raju Ramacnandran,
Advocate for the
Opposite Party No.1: Dr. Patel, can you briefly describe your educational qualification, the number of years you have put in practice, your age?

A. I passed my DHMS degree i.e. Diploma in Homoeopatnic Medicines and Surgery in 1983 and thereafter I jointed in Bombay one Private Nursing Home.

Hon'ble President: This DHMS is conducted by?

A. This DHMS is conducted by Gujarat Homeopathic Medical Council and from 1983 to 1989 I was working as a Chief Medical Officer there.

Hon'ble Pr. Where?

A. In Patel Surgical Nursing Home at

Bombay.
Hon'ble Pr. That is your own.
A. No that is another Patel. He is himself is a Surgeon.
Mr.Y. Krishnan Is he an Allopathic Surgeon.
A. Yes, he is an Allopathic Surgeon. Upto 1989 I was there, then I started my private practice and opened my clinic in 1989 and another clinic I opened in 1991.
Hon'ble Pr. Do you practice allopathy or homoeopathy?
A. Both, I am practising.
Hon'ble Pr. Are you registered as Allopathic Practitioner?
A. I am registered with the Homeopathic Council.
Hon'ble Pr. How are you entitled to practice allopathy?
A. As and when required in emergency cases.
Hon'ble Pr. Are you permitted in the Medical Council's Rules to practice allopathy?
A. In Gujarat it is allowed.
Hon'ble Pr. Are you allowed in Maharashtra
A. I have not gone through.
Q. Your age also for the record.
A. I am right now running 35.
Q. Dr. Patel, in the course of your Homeopathic Studies were you also given instructions in Allopathic medicines.
A. Yes.
Q. For how many years is the Homeopathic course,
A. Four years.
Q. And your instructions in Allopathic medicines was tor now long?
A. That is upto second year when we got the subject of Anatomy.
Q. When were you working in Patel Surgical Nursing Home, you have started your career? Did you handle Allopathic cases? Did you prescribe allopathic medicines.
A. Yes, in the absence of Dr. Patel, I have to manage all the emergency cases including medicines.
Q. The decision whether to give Allopathic medicine or Homeopathic medicine is taken by you or at the patients request. .
A. No, I was taking the decision."

10. The counter-affidavit and the statement of Respondent No.1 recorded by the Commission are self contradictory While in the couter-affidavit, he stated to have studied an integrated course in Allopathic and Homeopathic System of Medicine, in his statement on oath, he categorically stated that he had studied Homoeopathy only and instructions in Allopathic medicines were given only in the second year when

he was studying Anatomy. Usually, Pharmacology is taught to students after they have learned Physiology and Anatomy. D.H.M.S. Diploma awarded to Respondent No. 1 though indicates that he had studied Anatomy, Physiology, Pathology, Forensic Medicine, Surgery, Practice of Medicine, Hygiene, Midwifery and Gynaecology, does not mention Pharmacology relating to Allopathic System of Medicine to have been taught to him. He appears to have gained some experience (if at all it can be said to be experience) while he worked as Medical Officer in the private nursing home where he prescribed Allopathic Medicines also. It is admitted by him that he was not registered as a Medical Practitioner in Allopathy under the relevant statutory provisions applicable to the State of Maharashtra to which a detailed reference shall be presently made

11. It will be seen that Respondent No. 1 had all along treated Pramod Verma under Allopathic System prescribing Allopathic Medicines though he himself was registered as Medical Practitioner with the Gujarat Homeopathic Medical Council as he had studied Homoeopathy for 4 years in the medical College at Anand and had, thereafter, obtained a Diploma in Homeopathic Medicine and Surgery. If, therefore, he had not studied Allopathy and had not pursued the prescribed course in Allopathy nor had he obtained any degree or diploma in Allopathy from any recognised Medical College, could he prescribe and administer allopathic medicines, is the question which is to be answered in this appeal with the connected question whether this will amount to actionable negligence.

12. The decision of this Court in Indian Medical Association vs. B.P. Shantha (1995) 6 SCC 651, has settled the dispute regarding applicability of the Act to persons engaged in medical profession either as private practitioners or as Government Doctors working in Hospitals or Govt. Dispensaries. It is also settled that a patient who is a 'consumer within the meaning of the Act has to be awarded compensation for loss or injury suffered by him due to negligence of the Doctor by applying the same tests as are applied in an action for damages for negligence. .

13. Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do. or doing something which a prudent and reasonable man would not do. (See : Blyth vs. Birmingham Waterworks Co. (1856) 11 Ex 781; Bridges vs. Directors, etc. of N.L. Be. (1873-74) LR 7 HR 213; Governor-General in Council vs. Mt. Saliman (1948) ILR 27 Pat. 207; Winfield and Jolowicz on Tort).

14. The definition involves the following constituents:

(1) a legal duty to exercise due care;

(2) breach of the duty; and

(3) consequential damages.

15. The breach of duty may be occasioned either by not doing something which a reasonable man, under a given set of circumstances would do, or, by doing some act which a reasonable prudent man would not do.

16. So far as persons engaged in Medical Profession are concerned, it may be stated that every person who enters into the profession, undertakes to bring to the exercise of it, a reasonable degree of care and skill. It is true that a Doctor or a Suregon does not undertake that he will positively cure a patient nor. does he undertake to use the highest possible degree of skills as there may be persons more learned and skilled than himself, but he definitely undertakes to use a fair, reasonable and competent degree of skill. This implied undertaking constitutes the real test, which will also be clear from a study and analysis of the

judgment in Bolam vs. Friern Hospital Management Committee. (1957) 2 All ER 118, in which, McNair, J., while addressing the jury summed up the law as under :

> The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he conforms with one of these proper standards, then he is not negligent.

17. This decision has since been approved by the House of Lords in Whitehouse vs. Jordon (1981) 1 All ER 267 (HL); Maynard vs. West Midlands Regional Health Authority (1985) 1 All ER 635 (HL); Sidaway vs. Bathlem Royal Hospital (1995) 1 All ER 643 (HL); Chin Keo vs. Govt. of Malaysia (1967) 1 WLR 813 (PC).

18. The test pointed out by McNair, J. covers the liability of a Doctor in respect of his diagnosis, his liability to warn the patients of the risk inherent in the treatment and his liability in respect of the treatment.

19. This Court in Dr. Laxman Balakrishna Joshi vs. Dr. Trimbak Bapu Godbole & Anr. AIR 1969 SC 128, laid down that a Doctor when consulted by a patient owes him certain duties, namely, (a) a duty of care in deciding whether to undertake the case; (b) a duty of care in deciding what treatment to give; and (c) a duty of care in the administration of that treatment. A breach of any of these duties gives a cause of action for negligence to the patient.

20. The principles were reiterated in A.S.. Mittal vs. State of U.P. AIR 1989 SC 1570, in which wide extracts from that judgment were made and approved.

21. It is in the light of the above principles that it is to be seen now whether there was a breach of duty of care on the part of Respondent No. 1 in the process of treatment of Pramod Verma.

22. Respondent No. l, at the relevant time, was practicing at Bombay and admittedly he was also registered under the Bombay Homoeopathic Practitioners Act, 1959, in which, 'Homoeopathy' has been defined under Section 2(8) as under :

> "Homoeopathy means the Homoeopathic System of Medicine and includes the use Of Biochemic remedies."

23. 'Practitioner' has been defined in Section 2(12) while 'Registered Practitioner' is defined in section 2(16). 'Recognised Medical Qualification, according to Section (14A) means any of the medical qualifications in Homoeopathy, included in the Second or Third Schedule to the Homoeopathy Central Council Act, 1973.

24. Registration Of Practitioners is dealt with in Chapter IV of the Act. Section 20 provides that the Registrar shall prepare and maintain a register of Homoeopathic Practitioners for the State of Maharashtra in accordance

with the provisions of the Act. The particulars which are required to be entered in this register and the persons possessing requisite qualifications, whose names would be entered therein, are indicated in other Sub-sections of this Section.

25. Sub-section 12 (a) of Section 20 provides as under:

> "Every registered practitioner shall be given a certificate of registration in the form prescribed by rules and shall practice Homoeopathy only. The registered practitioner shall display the certificate of registration, in a conspicuous place in his dispensary, clinic or place of practice."

26. On registration, a person gets the right to practice. This Section also provides that it shall be lawful for such person to use, after his name, the words "Registered Homoeopathic Practitioner" in full to indicate that his name has been entered in the register under the Act.

27. Under Section 23. the Maharashtra Council of Homoeopathy has been given the power to remove the name of any registered practitioner if he is found guilty of any misconduct. Explanation appended to Section 23(1) defines misconduct, inter alia, as any conduct Which is infamous in relation to the profession.

28. The rights of Registered Practitioners are indicated in Section 28 which is quoted below:

> "28. Notwithstanding anything in any law for the time being in force -
>
> (i) the expression "legally qualified medical practitioner" or "duly qualified medical practitioner" or any word importing a person recognised by law as a medical practitioner or member of the medical profession shall, in all Acts of the Legislature in the State of Maharashtra and in all Central Acts (in their application to the State of Maharashtra)in so far as such Acts relate to any matters specified in List II or List III in the Seventh Schedule to the Constitution of India, include a practitioner whose name is entered in the resister under this Act;
>
> (ii) a certificate required by any Act from any medical practitioner or medical officer Shall be valid if such certificate has been signed by a practitioner whose name is entered in the register under this Act;
>
> (iii) a practitioner- whose name is entered in the register shall be eligible to hold any appointment as physician or other medical officer in any Homoeopathic dispensary, hospital or infirmary supported by or receiving a grant from the State Government and treating patients

according to the Homoeopathic system of medicine or in any public establishment, body or institution dealing with such system of medicine;

(iv) every registered practitioner shall be exempt, if he so desires, from serving on an inquest under the Code of Criminal Procedure, 1973.

29. The scheme of the Act, therefore, indicates that a person gets the right to practice in Homoeopathy on being registered as a Medical Practitioner. The certificate of registration issued to such practitioner requires him to practice in HOMOEOPATHY ONLY as is clear from the words 'AND SHALL PRACTICE HOMOEOPATHY ONLY' used in Sub-section 12(a) of Section 20. Apart from the right to practice, other rights which become immediately available to a person on registration of his name are indicated in Section 28 which, inter alia, includes right to treat patients according to the Homoeopathic System of Medicine.

30. Right to practice in Allopathic System of Medicine as also the right to practice in Ayurvedic or Unani System of Medicine is regulated by separate independent Central and local Acts. Indian Medical Council Act, 1956 deals, inter alia, with the registration of persons possessing requisite qualifications as Medical Practitioner in Allopathic System as also recognition of Medical Qualifications and Examinations by Universities or Medical Institutions in India.

Section 15 of this Act provides that any person possessing any of the qualifications mentioned in the Schedule appended to the Act, may apply for the registration of his name. Sub-sections 2 and 3 of Section 15, which are extremely relevant, are quoted below :

"15(21 Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register-

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practice medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed by or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of Indian Evidence Act, 1872 on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with

> fine which may extend to one thousand rupees, or with both."

31. The impact of the above provisions is that no person can practice medicine in any State unless he Possesses the requisite qualification and is enrolled as a Medical Practitioner on State Medical Register. The consequences for the breach of these provisions are indicated in Sub-section 3. If a person practices medicine without possessing either the requisite qualification or enrollment under the Act on any State Medical Register, he becomes liable to be punished with imprisonment or fine or both.

32. Apart from the Central Act mentioned above, there is the Maharashtra Medical Council Act 7 1965 dealing with the registration of Medical Practitioners and recognition of qualification and medical institutions. Section 2 (d) defines 'Medical Practitioner' or 'Practitioner' as under :

> "Medical Practitioner or Practitioner means a person who is engaged in the practice of modern scientific medicine in any of its branches including surgery and obstetrics, but not including Veterinary medicine or surgery or the Ayurvedic, Unani, Homoeopathic or Biochemic system of medicine
> (emphasis supplied)

33. It will be seen that the definition consists of two distinct parts; the first part contains the conclusive nature of phraseology and the latter part is the exclusionary part which specifically excludes Homoeopathic or Biochemic System of Medicine. A register of Medical Practitioners is to be maintained in terms of the mandate contained in Section 16(1) of the Act Under Sub-section (3), a person possessing requisite qualification and on payment of requisite fee can apply for registration of his name in the aforesaid Register.

34. A combined reading of the aforesaid Acts, namely, the Bombay Homoeopathic Practitioners Act, 1959, the Indian Medical Council Act, 1956 and the Maharashtra Medical Council Act, 1965 indicates that a person who is registered under the Bombay Homoeopathic Practitioners Act, 1959 can practice Homoeopathy only and that he cannot be registered under the Indian Medical Council Act, 1956 or under the State Act, namely, the Maharashtra Medical Council, Act, 1965, because of the restriction on registration of persons not possessing the requisite qualification. So also, a person possessing the qualification mentioned in the Schedule appended to the Indian Medical Council Act, 1956 or the Maharashtra Medical Counsel Act, 1965 cannot be registered as a Medical Practitioner under the Bombay Homeopathic Practitioners Act, 1959, as he does not possesse any qualification in Homoeopatnic System of Medicine. The significance of mutual exclusion is relevant inasmuch as the right to practice in any particular system of medicine is dependent upon registration which is permissible only if qualification) and that too, recognised qualification, is possessed by a person in that System.

35. It is true that in all the aforesaid Systems of Medicine, the patient is always a human being. It is also true that Anatomy and Physiology of every human being all over the world, irrespective of the country, the habitat and the region to which he may belong, is the same. He has the same faculties and same systems. The Central Nervous System, the Cardio-Vascular System, the Digestive and Reproductive systems etc. are similar all over the world. Similarly,

Emotions, namely, anger, sorrow, happiness, pain etc. are naturally possessed by every human being.

36. But merely because the Anatomy and Physiology are similar, it does not mean that a person having studied one System of Medicine can claim to treat the patient by drugs of another System which he might not have studied at any stage. No doubt, study of Physiology and Anatomy is common in all Systems of Medicines and the students belonging to different Systems of Medicines may be taught physiology and Anatomy together, but so far as the study of drugs is concerned, the pharmacology of all systems is entirely different.

37. an ailment, if it is not surgical, is treated by medicines or drugs. Typhoid Fever, for example, can be treated not only under Allopathic System of medicine, but also under the Ayurvedic, Unani and Homoeopathic Systems of Medicine by drugs prepared and manufactured according to their own formulate and pharmacopoeia . Therefore, a person having studied one particular System of Medicine cannot possibly claim deep and complete knowledge about the drugs of the other System of Medicine.

38. The bane of Allopathic medicine is that it always has a side-effect. A warning to this effect is printed on the trade label for the use of the person (Doctor) having studied that System of Medicine.

39. Since the law, under which Respondent No. 1 was registered as a Medical Practitioner, required him to practice in HOMOEOPATHY ONLY, he was under a statutory duty not to enter the field of any other System of Medicine as, admittedly, he was not qualified in the other system, Allopathy, to be precise. He trespassed into a prohibited field and was liable to be prosecuted under Section 15(3) of the Indian Medical Council Act, 1956. His conduct amounted to an actionable negligence particularly as the duty of care indicated by this Court in DR. LAXMAN JOSHI'S CASE (SUPRA) WAS BREACHED BY HIM ON ALL THE THREE COUNTS INDICATED THEREIN.

40. Negligence has many manifestations - it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence or Negligence per se, which is defined in Black's Law Dictionary as under :

> Negligence per se: Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes."

41. A person who does not have knowledge of a particular System of Medicine but practices in that System is a Quack and a mere pretender to medical knowledge or skill, or to put it differently, a Charlatan.

42. Where a person is guilty of Negligence per se, no further proof is needed. However, we may notice that Respondent No.1 started treatment of Pramod Verma for Viral Fever as it was "very much prevalent in the locality". Subsequently, he treated Pramod Verma for Typhoid Fever since it was "prevalent at that time in the locality in question and neighbouring localities of Bombay". On both the occasions, treatment was given for fever which Respondent No.1 thought was prevalent in the locality and, therefore, Pramod Verma would also be suffering from that fever. He did not feel it necessary to confirm the diagnosis by pathological tests which would have positively established whether Pramod Verma was suffering from typhoid Fever Respondent No.1 has given out in his statement on oath, recorded by the Commission,that he had advised Blood test and Urine test but Pramod Verma did not get it done. All the prescriptions of Respondent No.1 have been filed by the appellant but on none of them any advice was written by Respondent No.1 for Blood or Urine Test. We cannot ignore the usual practice of almost all the Doctors that when they want pathological tests to be done, they advise in writing on a prescription setting out all the tests which are required to be done. Admittedly, Respondent No.1 had not done it in writing. He says that he had advised it orally. This cannot be believed as this statement is contrary to the usual code of conduct of medical practitioners.

43. The condition of Pramod Verma while under treatment of Respondent No.1 deteriorated so much so that he had to be shifted to the private nursing home of Respondent No.1 and from that nursing home, he was shifted to the Hinduja Hospital in an unconscious state where he ultimately breathed his last.

44. On 29th of November, 1995, the following Order was passed by us:

> "This appeal is sequel to a complaint filed by Ms.Poonam Verma, before the National Consumer Disputes Redressal Commission, New Delhi, (the Commission), alleging negligence and deficiency in service on the part of two doctors of Bombay, namely, Ashwin Patel and Rajeev M.Warty. The Commission recorded the statements of both the doctors. Dr. Ashwin Patel as R.W.1 and Dr. Rajeev M.Warty as R.W.3, appeared before the Commission. Dr. Ashwin Patel produced an Expert, namely, Dr.Jitender V.Patel as R.W.2 in support of his case before the Commission
>
> Dr.Ashwin Patel is admittedly a Homeopath Physician. It is also admitted that he prescribed Allopath medicines to the deceased husband of the complainant. Dr. Rajeev M. Warty is an Allopath Practitioner running a Nursingh Home in Bombay. Deceased husband of the complainant was admitted in the Nursing where he stayed for two-three days. Finally the deceased was admitted in Hinduja Hospital, where he passed away within four hours of his admission. No expert

was produced by the complainant before the Commission. The Commission finally dismissed the complaint by a speaking order.

We are of the view that in order to do complete justice between the parties, it is necessary to have opinion from eminent doctors on the basis of the material which is on the record. We, therefore, request the Director of the All India Institute of Medical Sciences, New Delhi to appoint a Board of doctors/ Specialist in Medicine and other related branches, to examine the material which is being sent along with this order, regarding the correctness, adequency and other relative aspects of the treatment rendered to the deceased. The Board shall give its opinion within two weeks of the receipt of this order. Registry to send a copy of this order to the Director of the All India Institute of Medical Sciences, New Delhi, within 2 days along with the following documents:
(1) Copies of the Statements of Dr. Ashwin Patel (R.W.1), Dr. Jitender V.Patel (R.W.2) and Dr.R.M.Warty (R.W.3). These documents are at pages 141 to 201 of the record received from the Commission.
(2) Copies of the documents from pages 20 to 48 and 121 to 129 of the above said record.

The opinion of the Board of doctors shall be sent to this Court in sealed cover, with in the period indicated by us.

45. In pursuance of the above Order, Dr. J.N. Pande, Prof. & Head, Deptt. of Medicine, Dr. A.K. Mukhopadhya, Prof. & Head, Deptt. of Lab. Medicine, Dr. K. Prasad, Assoc. Prof. of Neurology, Dr. Y.K. Joshi, Assoc. Prof. of Gastroenterology, Dr. Kamal Kishore, Assoc. Prof. of Pharmacology and Dr. Shakti Gupta, Asstt. Prof. of Hosp. Admn. of the All India Institute of Medical Sciences examined the record of this case including all the prescriptions and they gave the following opinion:

"Mr.Parmod Verma suffered from fever on the 3rd of July, 1992 and after a brief period of illness of less than 2 weeks he expired on the 15th of July, 1992 at Hinduja Hospital. It was felt that material available to the Medical Board, it is not possible to arrive at a definitive conclusive diagnosis regarding the deceased. It appears most probably that Mr.Verma had an infection leading to septicemia possibly on a background of hitherto unrecognized diabetes mellitus. He probably suffered

> from some intracranial complications presumably related to infection and died as a consequence thereof. He received the usual treatment by antipyretics and commonly used antibiotics in the initial stages of his illness as per the usual practice in patients suffering from fever. Mr. Verma's illness however followed a fulminant course with rapid deterioration in his general condition requiring admission into a private nursing home and subsequently to a large referral hospital. From the available information it appears that the treatment administered to Mr.Verma was in keeping with the usual practice in the management of such problems. It is unfortunate that Mr. Verma had rather fulminant course of his disease and expired before the definitive diagnosis could be established."

46. The Professors have not been able to give a positive opinion but they do observe that Pramod Verma died before a positive diagnosis could be established. The sad story had its beginning in the hands of a Quack Allopathic Doctor, namely, Respondent No.1 who, having not studied Allopathic System of Medicine, treated Mr. Pramod Verma in that System and gave Broad Spectrum Antibiotics with antipyretics for Viral Fever "which was prevalent" and then for Typhoid Fever "which was also prevalent" together with tablets as also intra-muscular injections of a sodium compound to relieve him of pain without ascertaining the cause for the pain. Since Pramod Verma had already suffered at the hands of Respondent No.1 and his condition had already' been damaged to an unascertainable extent before he was shifted to the clinic of Respondent No.2, we do not, specially in iew of the report of the Professors of AIIMS, consider it proper to proceed against Respondent No.2.

47. But we are of the positive opinion that Respondent No.1, having practised in Allopathy, without being qualified in that system, was guilty of Negligence per se and, therefore, the appeal against him has to be allowed in consonance with the maxim Sic Utere tuo ut alienum non loedas (a person is held liable at law for the consequences of his negligence), leaving it to repeat to himself the words of Dr.J.C. Lettsom (On Himself) :

> 'When people's ill, they comes
> to I,
> I physics, bleeds, and sweats
> em;
> Sometimes they live, sometimes
> they die.
> What's that to I? I lets 'em.'

48. Pramod Verma was 35 years of age and was getting Rs.5,700/- per month as salary. He died a young death which has deprived his dependants, namely; the widow, two children and parents, of the monetary benefit they were getting. They are entitled under law to be compensated.

49. For the reasons stated above:

(a) The appeal as against Respondent No.1 is allowed and the judgment of the Commission,

to that extent, is set aside. The claim of the appellant is decreed as against Respondent No.1 for a sum of Rs.3,00,000/- payable to her within three months from, today failing which it shall be recoverable in accordance with law.

(b) Medical Council of India constituted under the Indian Medical Council Act, 1956 as also the State Medical Council under the Maharashtra Medical Council Act, 1965 to whom a copy of this Judgment shall be sent shall consider the feasibility of initiating appropriate action against Respondent No.1 under Section 15(3) of the Indian Medical Council Act, 1956 for his having practised in Allopathic System of Medicine without being registered with the Medical Council of India or the State Medical Council as also without possessing the requisite qualifications .

(c) The appellant shall be entitled to her costs which are quantified at Rs . 30, 000/-.