SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Yahya Afridi, CJ
Justice Irfan Saadat Khan
Justice Shakeel Ahmed

Civil Petition No. 788 of 2018 and Civil Appeal No.244 of 2018
Against the judgment dated 27.11.2017 passed by the High Court of Balochistan, Quetta in RFA No.40 of 2010 and RFA No.159 of 2009

Bibi Hanifa (in both cases) ...Petitioner/ Appellant

VERSUS

Dr. Jamila Raza and others (in CPLA 788/2018) ...Respondent(s)
Secretary Health Department, Govt. of Balochistan, Quetta & others (in CA 244/2018)

For the Petitioner/Appellant: Syed Imdad Ali Shah, ASC (video-link, Quetta)

For the Govt. Mr. Tahir Iqbal Khattak, Addl. AG. Balochistan

For Respondent No.1 in CPLA 788/2018 & respondent No.4 in CA 244/2018: Sardar Muhammad Ghazi, ASC

Date of Hearing: 07.07.2026

JUDGMENT

Irfan Saadat Khan, J.- These matters comprise Civil Petition No. 788 of 2018 and Civil Appeal No. 244 of 2018, both directed against the common judgment and decree dated 27.11.2017 passed by the High Court of Balochistan, Quetta, (hereinafter referred to as "**the High Court**") in Regular First Appeal No. 159 of 2009 and Regular First Appeal No. 40 of 2010, whereby the appeal preferred by the official respondents was allowed, the judgment and decree of the Trial Court were set aside, and the suit instituted by Bibi Hanifa (hereinafter referred to as "**BH**") for recovery of damages on account of alleged medical negligence stood

dismissed in its entirety, while BH's own appeal seeking enhancement of the decretal amount met the same fate. As the two matters arise out of a single composite judgment and were, by order of this Court dated 05.10.2023, directed to be heard together, we propose to dispose of both by this common judgment.

2. Briefly stated, the facts giving rise to the present appeal are that the petitioner/appellant (**BH, wife of Rehmatullah**) went to District Headquarters Hospital, Pishin (hereinafter referred to as **"the Hospital"**), to deliver her eighth child and was placed under the care of Dr. Sughra (now deceased) and Dr. Jamila Raza (hereinafter referred to as **"Dr. Jamila"**), Consultant Gynaecologists. On 20.11.2007, a Caesarean Section was performed under their care. After the operation, BH complained of pain and fever and stated that her condition had worsened, she was advised by the concerned doctors, through hospital staff, that these were minor complications arising from the recent surgery and would resolve and over soon. While she remained at the Hospital, she was advised by its doctors to obtain an ultrasound from an independent clinic so that a true picture could emerge as to the cause of her pain and fever. That ultrasound detected **"something"** in her abdomen. As her condition continued to deteriorate, an ambulance was arranged by the Hospital staff, and she was taken to Bolan Medical Complex Hospital (hereinafter referred to as **"BMC"**). There she was examined by Dr. Inamullah, who obtained a second ultrasound from an independent clinic in which **"something"** was again detected in her abdomen. A few days later, she underwent a further surgery at BMC, in which sponges were recovered from her abdomen, which, according to BH, had been negligently left behind during the initial delivery procedure by Dr. Jamila and the hospital staff. The newborn passed away the day after birth, which, according to the hospital and the doctors, was due to the infant's own condition, while BH maintains that it was due to negligence on the part of the doctors or the hospital, she having been informed prior to delivery that both she and the child were healthy and that

a normal delivery, as with her previous seven children, was expected. It is also on record that, following her second operation at BMC, she remained under treatment at that hospital for a month and a half. Aggrieved by the conduct of the doctors and the hospital administration, BH filed a suit for damages against them in 2008 in the sum of Rs. 10 million.

3. The learned Trial Court took up the matter, framed issues, and recorded the evidence produced by the respective parties. The Trial Court recorded the evidence of 09 P.Ws, including BH, and 05 D.Ws. After appreciating the oral as well as documentary evidence, the Trial Court, vide judgment and decree dated 31.10.2009, decreed the suit and awarded damages in favour of BH in the total sum of Rupees fifteen hundred thousand (Rs. 15,00,000/-), holding defendant No.1 Dr. Jamila Raza and defendant No.4 Dr. Rashid each liable to pay Rupees seven hundred thousand (Rs. 7,00,000/-), and defendant No.2 Naseebullah liable to pay Rupees one hundred thousand (Rs. 1,00,000/-). It may however be noted that the Trial Court awarded the compensation/damages on the ground of leaving sponges negligently and not on the allegation levelled by BH that her baby had died, the other day of her birth, due to the negligence of the respondents. Both parties filed appeals before the learned High Court. The respondents contended that there was no negligence on their part, that BH had left the hospital on **LAMA (Leave Against Medical Advice),** and that the sponges were either never produced before the Trial Court or, if they existed, had been left intentionally to control internal bleeding, on this basis, they argued that neither negligence nor liability for damages was made out. BH, for her part, appealed for enhancement of the damages awarded.

4. The High Court took up both the matters and, by the impugned judgment dated 27.11.2017 in RFA No. 159 of 2009 (filed by the hospital and the doctors) and RFA No. 40 of 2010 (filed by BH), allowed the appeal of the hospital and the doctors, set aside the judgment and decree of the Trial Court, and consequently

dismissed BH's appeal as well. The High Court held, categorically, that since BH had left the hospital on LAMA, and the sponges said to have been found in her abdomen were not produced, she had failed to prove negligence on the part of either the doctors or the hospital. The High Court further noted that a criminal complaint had also been filed by BH, in addition to the civil suit, which was dismissed by the Judicial Magistrate, Chaman, vide order dated 05.07.2010, and subsequently affirmed by the High Court vide judgment dated 30.11.2011. When that matter was challenged before this Court by BH, it was dismissed for non-prosecution vide order dated 23.01.2014.

5. Aggrieved by the High Court's order dated 27.11.2017, CPLA No. 788 of 2018 and Civil Appeal No. 244 of 2018 were filed, the former against the High Court's decision allowing the respondents' appeal, and the latter against the setting aside of the Trial Court's judgment and decree dated 31.10.2009 in RFA No. 159 of 2009, which had been filed by the respondents before the High Court. It was noted that while CPLA No. 788 of 2018 was filed within time while Civil Appeal No. 244 of 2018 was barred by five days. This Court, while hearing the matters vide order dated 08.06.2023, observed as under:

> *"This is a simple matter concerning damages claimed for medical negligence, we would like to proceed with it on the next date of hearing positively."*

Then vide order dated 05.10.2023, further observed as under:

> *"We are inclined to hear these matters together, subject to all just and legal exceptions relating to the question of limitation. Therefore, let notice be issued to the respondents."*

6. Syed Imdad Ali Shah, learned counsel, appeared on behalf of BH (through video-link, Quetta) and submitted that the impugned judgment of the High Court suffers from misreading and non-reading of the evidence on record. He submitted that the Trial Court, upon a proper appreciation of both the oral and

documentary evidence, had rightly held the respondents liable for negligence in the discharge of their professional duties, and that no legal infirmity existed in that finding such as would have warranted interference by the High Court in the exercise of its appellate jurisdiction.

7. The learned counsel next contended that BH had to leave the Hospital because her condition was deteriorating and she was not receiving proper care from either the doctors or the hospital, and that had she not left, she might have died there. He submitted that she went to BMC, for a second opinion, where she was thoroughly examined by Dr. Inamullah, who conducted a second ultrasound revealing that "something" was present in her abdomen and was adversely affecting her condition, requiring immediate removal through a second operation. He submitted that the Trial Court, having examined the deposition of Dr. Inamullah, rightly concluded that the sponges had been left in BH's abdomen through the sheer negligence of Dr. Jamila and the Hospital staff, and that had they not been removed, they would have become life-threatening.

8. He further submitted that the stance taken by Dr. Jamila and the Hospital, that BH's condition worsened on account of mental agony following the infant's death, is a fabricated story, and that her suffering was in fact caused by the sponges negligently left in her abdomen. He argued that since the presence of the sponges is a matter of record, duly appreciated by the Trial Court, the High Court's assertion that they were not produced before the Trial Court does not stand to reason, and is factually incorrect, the sponges having in fact been produced before the Trial Court. He submitted, in the alternative, that even were it assumed that the sponges had not been produced before the Trial Court, the respondents nowhere denied that the sponges were present in BH's abdomen or that they were subsequently recovered in the second operation at BMC. He submitted that BH had successfully proved her case through oral and

documentary evidence, which the High Court had brushed aside merely on the ground that the criminal proceedings had been decided against her, without regard to the fact that civil and criminal matters are governed by different principles.

9. Learned counsel submitted that criminal cases are decided with regard to punishment for the commission of an offence, whereas civil matters are decided with regard to the enforcement of civil rights and obligations. That in criminal matters guilt must ordinarily be established beyond reasonable doubt, whereas in civil matters rights and liabilities are determined on a preponderance of evidence and probabilities, and that the object of a criminal trial is punishment, whereas the object of civil proceedings is the enforcement or protection of civil rights and obligations. He submitted, in conclusion, that a grave illegality had been committed by the High Court in allowing the appeal of the respondents and dismissing that of BH, that the impugned judgment is liable to be set aside, and that the order of the Trial Court is liable to be restored, with a direction that the full amount claimed, Rs. 10 million, be granted.

10. Mr. Tahir Iqbal Khattak, learned Additional Advocate General, stated that this is a matter between BH and the respondents, and that whatever decision is passed by this Court will be complied with in letter and spirit. He stated that, as another Additional Advocate General, Balochistan, appearing before the High Court had supported the order of the Trial Court, he likewise supports it, while opposing BH's claim for enhancement of damages beyond the amount already granted by the Trial Court.

11. Sardar Muhammad Ghazi, learned counsel, appeared on behalf of Respondent No. 1 in CPLA No. 788 of 2018 and for the respondent in Civil Appeal No. 244 of 2018. He submitted, firstly, that Civil Appeal No. 244 of 2018 is barred by five days and is liable to be dismissed on that ground. As to CPLA No. 788 of

2018, he submitted that BH had approached the wrong forum, the petition being not maintainable on the ground that a special Medical Tribunal has been established under the Medical Tribunal Act, 2020, which bars the institution of a civil suit for proving negligence on the part of a medical practitioner, and that both the appeal and the petition are accordingly liable to be dismissed on the ground of jurisdiction alone. As to the merits, learned counsel submitted, by way of his written arguments, filed on 03.09.2026, as follows:

> *"There is no legal requirement for discussing the merits of the case further; hence, there is no need to dilate upon the evidence."*

12. We have heard the learned counsel for the parties at considerable length and have perused the available record.

13. There are three primordial questions involved in the instant matter:

i. Limitation;
ii. Maintainability of the suit; and
iii. Whether, under the given circumstances, Dr. Jamila and the Hospital committed medical negligence and are liable to compensate BH.

14. As to limitation, it is an admitted fact that Civil Appeal No. 244 of 2018 is barred by five days, whereas CPLA No. 788 of 2018 is within time. Objection has been raised on this ground by the office and by learned counsel for the respondents. BH has filed an application for condonation of delay on the ground that she resides in a remote area of Balochistan and is a *Parda Nasheen Lady*, and that since the circumstances were beyond her control, the delay may be condoned. The record further shows that both CPLA, and the Civil Appeal, arise out of the same order of the High Court dated 27.11.2017.

15. It is a settled proposition of law that, where several appeals arise from the same order and some are filed within time while others not, an application for condonation of delay in respect of the time-barred appeal is ordinarily allowed.

Since CPLA No. 788 of 2018 is within time and both matters arise from a common judgment, the objection that Civil Appeal No. 244 of 2018 is time-barred does not stand in the way of its being heard together with the CPLA. Reference may be made to *Government of Balochistan through Chief Secretary, Quetta and others v. Dr. Muhammad Tariq Jafar and others*,[1] where, in materially identical circumstances, three appeals were filed, of which one was within time and two were time-barred, and a three-member Bench of this Court, holding that important questions of law had been raised and that condonation was necessary to avoid legal complications, condoned the delay.

16. In the instant matter, it has already been observed, vide orders dated 08.06.2023 and 15.10.2023, that the matter requires consideration and that this Court should proceed to hear it. We see no reason not to condone the delay of five days in Civil Appeal No. 244 of 2018 which we hereby condone. The objection raised by the Office as well as the counsel for the respondents, therefore, stands repelled.

17. The next question concerns the maintainability of the suit. The counsel for the respondents has raised an objection that the suit is not maintainable, as BH was required to approach the Medical Tribunal, established under the Medical Tribunal Act, 2020 (hereinafter referred to as **"the Tribunal"**). We are unable to accept this submission also. The suit was instituted, and Civil Suit No. 27 of 2009 was filed before the Trial Court, in 2008, at a time when neither the Medical Tribunal Act, 2020 nor the Balochistan Healthcare Commission Act, 2019 were in vogue. The petitioner/appellant cannot be faulted for failing to approach a forum that did not exist, when her cause of action arose and her suit was filed, nor does section 10 of the Tribunal Act assist the respondents. That section

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[1] Government of Balochistan through Chief Secretary, Quetta and others v. Dr. Muhammad Tariq Jafar and others, (2020 SCMR 1689).

provides that suits pending before any court stand abated upon the Act's promulgation, but only in respect of matters falling within the Tribunal's jurisdiction. As is apparent from the preamble to the Act, the Tribunal's jurisdiction is confined to disputes arising out of the actions of the authorities constituted to regulate different areas of the medical sector in Pakistan, and to the cost-effective adjudication of such disputes. Neither of these is what the present suit concerns. It is a civil dispute in which BH alleges medical negligence against a doctor and the hospital and claims damages in consequence, a matter in our view properly triable by a civil court. The Tribunal's jurisdiction, in our view, is disciplinary, not compensatory, and a suit of the present character does not fall within it. We accordingly find the civil suit to be maintainable and reject this contention of the learned counsel for the respondents.

18. It may further be noted that BH's suit before the learned Civil Judge, Pishin, was not a complaint that Dr. Jamila Raza's registration ought to be cancelled, or that she had misrepresented her qualifications, or that she had otherwise violated an obligation created by the Pakistan Medical and Dental Ordinance, 1962. It was a suit in tort, on the ground that a surgical operation had been performed negligently and that surgical sponges had been left inside her abdomen, in consequence of which she suffered and for which compensation was claimed. The duty said to have been breached was the duty of care owed by a surgeon or a hospital to a patient under the general law of negligence, not a duty arising under the Pakistan Medical and Dental Ordinance or the Pakistan Nursing Council Act.

19. Hence, we hold that the objection to the maintainability of these proceedings fails, and Civil Suit No.27 of 2009 was, and remains, competently instituted and triable by the civil court.

20. We will now dilate upon the important aspect raised in the instant matter, that whether the respondents were negligent in performing their medical duties and whether the petitioner is to be compensated in monetary terms in this regard.

21. Before applying this question to the facts, it is necessary to settle what the law requires of a medical practitioner, and by what standard her conduct, as well as that of the Hospital, falls to be judged.

22. Black's Law Dictionary (12th edn.) defines "negligence" as the failure to exercise the standard of care a reasonably prudent person would have exercised in similar circumstances, conduct falling below the standard set to protect others against unreasonable risk of harm.[2] The elements necessary to recover damages for negligence are given as the existence of a duty on the defendant to protect the plaintiff from the injury complained of, and an injury resulting from the defendant's failure to discharge that duty, usually expressed as duty, breach, causation, and damages. This is the general foundation on which the more specific law of medical negligence rests.

23. The term "medical negligence" has nowhere been defined in the statute law of Pakistan. The law of torts here remains uncodified, administered on common law principles developed through a long line of judicial pronouncements. The Pakistan Penal Code, 1860 offers no assistance: it does not define negligence, but creates offences in which a rash or negligent act is an ingredient, as in sections 319, 320, 321 read with 322, 337-G and 337-H, leaving the content of the expression to the courts. "Medical negligence" is of more recent origin, absent from our statute book until recently, and remains, in this jurisdiction, an

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[2] Black's Law Dictionary (12th edn.), entry "negligence".

emerging area of the law with no single definition of universal application. Such definitions as exist, lexicographical and statutory, are examined below.

24. Blakiston's Gould Medical Dictionary (4th edn.) defines "negligence", in legal medicine, as an act of commission or omission in the care of patients which, without regard to circumstances, violates a statute or is obviously opposed to accepted medical practice. The Oxford Concise Medical Dictionary defines it as the failure to exercise a reasonable standard of care, the English standard being fixed by Bolam[3] as amended in Bolitho[4] (discussed further below): whether the care fell short of that of a reasonable body of professional opinion, and whether the conduct withstands logical analysis, a question for the court, not the profession. The Bolam limb of this formulation was itself applied by the House of Lords in Whitehouse v. Jordan[5] and Maynard v. West Midlands Regional Health Authority,[6] and by the Privy Council in Chin Keow v. Government of Malaysia.[7] Section 2(xxiv) of the Islamabad Healthcare Regulation Act, 2018 requires proof of a duty owed, its breach, resulting injury, and consequent damage or death. The Punjab Healthcare Commission Act, 2010, the Balochistan Healthcare Commission Act, 2019, and the Sindh Healthcare Commission Act, 2013 each define "medical negligence" in materially identical terms, as a case where a patient sustains injury or dies as a result of improper treatment in a healthcare establishment, determined, in case of death, on the basis of the medical autopsy report.[8] Each of these three Acts fixes liability, subject to an identical qualification, on one of two findings: that the healthcare establishment lacked the human resource or equipment it professed to possess, or that the practitioner or her employee failed to exercise with reasonable competence the

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[3] Bolam v. Friern Hospital Management Committee (1957) 1 WLR 582; (1957) 2 All ER 118.
[4] Bolitho v. City and Hackney Health Authority (1998) AC 232.
[5] Whitehouse v. Jordan (1981) 1 WLR 246.
[6] Maynard v. West Midlands Regional Health Authority (1985) 1 All ER 635.
[7] Chin Keow v. Government of Malaysia (1967) 1 WLR 813 (PC).
[8] Punjab Healthcare Commission Act, 2010, s. 2(xxii); Balochistan Healthcare Commission Act, 2019, s. 2(dd); Sindh Healthcare Commission Act, 2013, s. 2(xxii).

skill she in fact possessed.[9] Each Act excludes, in identical terms, the recognised and known complications of a medical or surgical treatment from the scope of negligence.[10] The burden of establishing negligence lies on the party alleging it, the standard differs according to the forum, mens rea in a criminal matter, the balance of probability in a civil one,[11] a distinction this Court elaborates further below.

25. Having examined the meaning of "negligence" and "medical negligence" as they stand in the law of this country, we turn to the merits, to determine whether the facts of the present case fall within that definition, and whether there was negligence on the part of the doctor and the hospital on the touchstone of civil responsibility.

Whether the record establishes that two surgical sponges were retained within the appellant's abdomen following the Caesarean Section performed on 20.11.2007, and if so, on what evidentiary basis?

25.1. The appellant was admitted to the Hospital on 20.11.2007 and underwent a Caesarean Section. The operative note of that date records the procedure as performed "By: Dr. Jamila," with Dr. Rashid administering anaesthesia and Naseebullah and Asmatullah recorded as assisting. No other surgeon is named in that note. Following the operation, the appellant's condition deteriorated. As per her deposition (P.116), she felt immense pain in her abdomen the day after the operation, and the doctor at the Hospital advised her to obtain an ultrasound. She was, in the meantime, advised by the concerned doctors, through hospital staff, that these were minor complications arising from the surgery and would resolve soon. On the hospital's own advice, she and her

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[9] Punjab Healthcare Commission Act, 2010, s. 19; Balochistan Healthcare Commission Act, 2019, s. 22; Sindh Healthcare Commission Act, 2013, s. 19.
[10] Punjab Healthcare Commission Act, 2010, s. 19(2); Balochistan Healthcare Commission Act, 2019, s. 22(2); Sindh Healthcare Commission Act, 2013, s. 19(2).
[11] Pakistan Steel Mills Corporation Ltd. v. Malik Abdul Habib, (1993 SCMR 848), para 13; Jacob Mathew v. State of Punjab and another, (2005) 6 SCC 1, para 16, citing Syad Akbar v. State of Karnataka.

attendants went to the private clinic of Dr. Sharifa, where, in the appellant's own words, Dr. Sharifa "diagnosed that there is 'something' in her abdomen." Her brother, M. Hashim (P.71–72), confirmed that an ultrasound was advised, that it revealed something inside her abdomen, and that the report was shown to the Hospital, whose staff issued a referral chit and sent them for a second opinion to BMC. Her husband, Rehmatullah, confirmed (P.84, P.86) that they were sent to BMC by the doctors at the Hospital, and that hospital staff gave a slip to the ambulance driver. At BMC, upon consulting Dr. Inamullah, he directed a second ultrasound, which was obtained from Dr. Naveed Ashraf, PW-7, who likewise reported the presence of "something" in the appellant's abdomen (P.72).

25.2. At BMC, the appellant came under the treatment of Dr. Inamullah, PW-2. He performed a re-exploration, aspirated over a litre of foul-smelling, malodorous, purulent discharge from the abdomen, and recovered two sponges, one by his own hand and the other by Dr. Ibrahim, the senior surgeon he called in to assist (P.79). His findings are recorded in his own report dated 23.11.2007. In cross-examination, PW-2 was asked whether the sponges had been left through negligence or retained for a safety purpose, who stated that he could not say which. Her husband, Rehmatullah, further deposed (P.87) that he personally brought the recovered sponges, which were examined by the Trial Court. On 10.06.2009, the appellant's own statement was likewise recorded before the Trial Court, in which she produced medicine receipts, laboratory and X-ray reports, and "recovered sponges (symbol of sponges)," exhibited among a series of exhibits running from Exp/19 to Exp/48. It may be noted that the learned High Court observed that the sponges were not produced, however, as per page 87 of the record of Civil Appeal No. 244 of 2018, Rehmatullah had produced the said sponges before the Trial Court during his examination. This appears to be a fact which escaped the attention of the High Court.

25.3. Dr. Azam, Medical Superintendent, Pishin Hospital, confirmed in his cross-examination (P.139–140) that the hospital did have a regular anaesthetist, but in absence, Dr. Rashid, an ENT specialist by qualification, acted in that capacity. Naseebullah, admittedly appointed to the hospital as a cook, stated in his own cross-examination (P.145) that he was permitted by the Medical Superintendent to enter the operation theatre on the strength of his own claim to have received training in anaesthesia (however no certificate to that effect was produced and provided by him).

25.4. Dr. Jamila's written statement, filed in 2008, took the position that no sponge or foreign material had been left inside the appellant at all, and that "the whole story is concocted." This, in our view, does not withstand the record. It stands established that the sponges were recovered from the appellant's abdomen by a doctor performing duty independently at BMC, a doctor who was neither BH's doctor of first instance nor in any manner connected to her, and who had no conceivable reason to falsely depose about the presence and recovery of the sponges. This is coupled with the fact that two separate ultrasound reports, taken independently, also confirmed the presence of "something" in the abdomen, subsequently found to be the sponges. This is compounded further by the fact, already on record, that Naseebullah, appointed to the hospital as a cook, was permitted into the labour room and operation theatre during this very surgery. That a person with no medical training was allowed into the theatre in that capacity says something about the standard of care exercised, and correspondingly little confidence can rest on the internal account given by the witnesses who were themselves part of the team, whose conduct is in question.

Whether the retention is attributable to a deliberate and therapeutic act of abdominal packing, or to a negligence?

26. The written statement filed on behalf of the respondents categorically denies that any sponge was left at all, and their own witness, DW-8, Dr. Arshad, testified that the operation was carried out successfully and without complication. The fact remains, however, that whether the sponges were left for abdominal packing to prevent internal bleeding, or by way of negligence, they were subsequently recovered during the second operation, along with over a litre of malodorous substance, following the appellant's complaint of severe pain, anguish, and torment, which the Hospital doctors and staff attributed to minor post-operative complications. It was also averred that, had she remained at the Hospital without obtaining a second opinion, she may have died there on account of their negligence and failure to attend her. Where a foreign object is found retained within a patient's body following surgery, the presence of that object calls, in itself, for an explanation from the operating team.[12] The Supreme Court of India applied this principle where a mop was found retained in a patient following an operation, holding that, in the absence of any valid explanation from the defendants capable of satisfying the Court that no negligence had occurred, negligence was properly found established.[13] The same Court has also listed, among faults so obvious that they can be established without elaborate expert evidence, "leaving inside the patient swabs or other items of operating equipment after surgery".[14]

Whether Bolam and Bolitho afford a defence to Dr. Jamila even if abdominal packing is accepted as a general medical practice.

26.1. We would add, for completeness, that even if abdominal packing were accepted by a responsible body of medical opinion within the meaning of

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[12] Mahon v. Osborne (1939) 2 KB 14.
[13] Achutrao Haribhau Khodwa and others v. State of Maharashtra and others, (1996) 2 SCC 634.
[14] Indian Medical Association v. V.P. Shantha and others, (1995) 6 SCC 651, where the Court, in the passage on faults "which can be easily established", included "leaving inside the patient swabs or other items of operating equipment after surgery".

Bolam,[15] that principle has no application on the facts before us. In our view, Bolam protects the exercise of professional judgment that was actually made, it does not manufacture a judgment that was never exercised at all. As explained in Bolitho,[16] even a genuinely held body of medical opinion must be shown to be logically defensible, capable of withstanding scrutiny by the Court, and not merely asserted. Applying that standard here, the response conveyed to the appellant's family by the respondents, that her pain and fever were minor complications of the surgery, which would resolve soon, is not consistent with the events that took place in the instant matter subsequently.

27. On the basis of the said record, in our view, the balance of probabilities favours BH.

28. Before proceeding further, we would like to record that access to proper medical care has been recognised, in this jurisdiction and elsewhere, as an incident of the right to life. This Court, in Shehla Zia v. WAPDA,[17] observed that life includes all the amenities and facilities a person is entitled to enjoy with dignity. The Supreme Court of India has taken a consistent line on the standard owed by a medical practitioner to a patient. In Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole,[18] it was held that a doctor consulted by a patient owes a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment, and that breach of any of these gives a cause of action in negligence. In Jacob Mathew v. State of Punjab,[19] the Court held that liability arises only where the doctor's conduct falls below the standard of a reasonably competent practitioner, and that a mere error of judgment, or the adoption of one accepted

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[15] Bolam v. Friern Hospital Management Committee (1957) 1 WLR 582.
[16] Bolitho v. City and Hackney Health Authority (1998) AC 232.
[17] Shehla Zia v. WAPDA, PLD 1994 SC 693.
[18] Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole and another, AIR 1969 SC 128.
[19] Jacob Mathew (supra, para 24), para 48, conclusions (1)–(3).

course of treatment over another, does not, by itself, amount to negligence. In Kusum Sharma v. Batra Hospital and Medical Research Centre,[20] the Court summarised the governing principles, holding that a medical professional is liable only where the conduct falls below the standard of a reasonably competent practitioner in that field, and that a mere error of judgment, where another doctor would have adopted a different course, does not found liability. In Achutrao Haribhau Khodwa v. State of Maharashtra,[21] where a mop was left inside a patient following an operation, the Court held that negligence was evident from the fact of the retention itself, requiring no further expert evidence to establish it. This last authority is squarely applicable to the facts before us. In the domestic jurisdiction, this Court's own decision in Mrs. Alia Tareen v. Amanullah Khan,[22] remains the leading authority on the standard of care owed by a medical practitioner.

Whether the doctrine of res ipsa loquitur applies on these facts, and whether the appellant's departure from hospital care constitutes a discharge Left Against Medical Advice (LAMA) affording the respondents a defence?

29. The maxim "*res ipsa loquitur*" means that the thing speaks for itself: where an occurrence is of a kind that would not ordinarily happen without negligence, the mere fact of its happening is prima facie evidence of negligence, and the defendant must persuade the Court that it did not occur through his negligence.[23] In Mahon v. Osborne,[24] a retained surgical swab was held to call

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[20] Kusum Sharma and others v. Batra Hospital and Medical Research Centre and others, (2010) 3 SCC 480.
[21] Supra, para 26
[22] Mrs. Alia Tareen, Managing Director, Pakistan General Hospital, Quetta and others v. Amanullah Khan and others, PLD 2005 SC 99.
[23] Pakistan Steel Mills Corporation Ltd. v. Malik Abdul Habib, 1993 SCMR 848, paras 12 and 13.
[24] Mahon v. Osborne (1939) 2 KB 14.

for an explanation from the operating surgeon, since such material is not ordinarily left behind where due care has been taken. Clarke v. Worboys[25] applied the same principle to an unexplained burn suffered during a routine procedure. This Court, in Pakistan Steel Mills,[26] explained that the doctrine applies where the thing causing injury was under the sole management of the defendant, the occurrence would not ordinarily happen without negligence, and no other explanation appears on record, conditions met here for the reasons already given. The burden accordingly passed to Dr. Jamila, and to the hospital, to show that the sponges were left as a deliberate act to control internal bleeding, or through negligence. In their deposition, the respondents denied recovery of the sponges from the appellant's abdomen altogether, a position contradicted by Dr. Inamullah, who favoured neither Dr. Jamila and the Hospital nor BH, but gave his self-reliant opinion on the basis of the second operation he himself conducted on an independent basis.

30. We note that PW-2 Dr. Inamullah stated that the appellant came to him on her own, without referral. PW-1 and the appellant's husband, by contrast, stated that a referral chit was issued by the Hospital and that an ambulance was also arranged by the hospital's own staff, with the hospital's own knowledge.

31. In LAMA, the most important consideration is the condition of the patient before his/her leave, and what emerged after it. The question is not simply whether BH was later found to be unwell, but whether her condition, before she left, had already worsened on account of negligence on the part of the doctor or the hospital. On this record, the appellant's pain and deterioration began immediately after the operation of 20.11.2007, well before any question of her leaving the hospital arose. If the facts of a matter reveal that the patient's

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25 Clarke v. Worboys, The Times, 18 March 1952 (CA).
26 Pakistan Steel Mills (supra), para 12.

condition worsened after LAMA, the doctor and the hospital which the patient left cannot, in the ordinary course, be held negligent for that subsequent deterioration, but where the condition of the patient was such that she had no choice but to leave against medical advice, on account of a condition that, left unaddressed by the hospital where she was admitted, threatened her life, the patient or his/her relatives are left with no option but to seek a second opinion elsewhere. This principle has been recognised in Dr. Indirani Murugan v. Suvedha,[27] where the Madras High Court held that a patient who knows a foreign object remains within her body, and whose treating doctors are unable to trace it despite many days of admission, cannot be faulted for leaving to seek treatment elsewhere.

Whether the retained material must be assessed on the balance of probability applicable to civil claims, rather than a standard approaching proof beyond reasonable doubt.

32. The Indian Supreme Court observed in Jacob Mathew that criminal liability requires gross recklessness proved beyond reasonable doubt, whereas civil liability is made out wherever the balance of probability discloses a breach of duty.[28] A civil court asks not whether every alternative has been excluded, but which explanation the evidence, taken as a whole, makes more probable. Article 2(4) of the Qanun-e-Shahadat Order, 1984 gives this the force of law: a fact is "proved" when the Court believes it to exist, or considers its existence so probable that a prudent person ought to act upon the supposition that it exists. Measured against that standard, the recovery of the sponges is established by PW-2's unchallenged testimony, his contemporaneous report of 23.11.2007, and the exhibit produced at the appellant's own statement of 10.06.2009.

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[27] Dr. Indirani Murugan v. Suvedha, Madras High Court, Second Appeal, 2019.
[28] Jacob Mathew (supra, para 24).

33. Applying this to the facts of the present case, the following picture emerges:

> ***Dr. Jamila operated on the appellant; the operative note names her as the surgeon.***
> ***Dr. Inamullah's unchallenged testimony, his contemporaneous report, and the exhibited material together show two sponges left in the appellant's abdomen.***
> ***Her condition deteriorated after the surgery; the first ultrasound, and the second, found "something" inside her; a second major operation removed the sponges from her abdomen.***
> ***What followed was prolonged pain, a further operation, the removal of over a litre of malodorous substance, and a month and a half of recovery treatment at BMC.***

Quantification and Award of Compensation

34. Compensation in a case of this kind is not punitive. Its purpose is restitutio in integrum: the sum of money which will, so far as money can, place the injured party in the position she would have occupied had the wrong not been committed.[29] Damages of this kind fall into two broad categories: pecuniary loss, the cost of medical and re-operative care and any earning capacity lost, and which is capable of some arithmetical calculation, and non-pecuniary loss, pain, suffering, and loss of amenity, which does not admit of precise arithmetic and is fixed by the exercise of judicial judgment, guided by the comparative severity of injury in decided cases. A claimant is entitled to distinct compensation for severe mental anguish alongside physical injury, and need not produce a diagnosed psychiatric illness to recover for it, a serious and prolonged disturbance beyond ordinary distress is sufficient.[30] Having regard to the appellant's prolonged suffering, the emergency second operation, and the anguish she endured, we

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[29] Livingstone v. Rawyards Coal Co., (1880) 5 App Cas 25.
[30] Saadati v. Moorhead, 2017 SCC 28; Spring Meadows Hospital and another v. Harjol Ahluwalia and another, AIR 1998 SC 1801.

assess compensation as follows: Rs. 2,00,000 for medical and re-operative expenses; Rs. 6,00,000 for physical pain, suffering, and surgical trauma; Rs. 5,00,000 for mental anguish and emotional distress; and Rs. 2,00,000 for loss of amenities and bodily integrity, a total of Rs. 15,00,000.

35. Accordingly, exercising our jurisdiction under Article 185(2)(d) of the Constitution of the Islamic Republic of Pakistan, 1973, we allow Civil Appeal No. 244 of 2018. The judgment of the High Court is set aside, and the decree of the Trial Court is modified in the terms set out below. Civil Petition No. 788 of 2018, filed under Article 185(3) and seeking enhancement of the decretal amount, is converted into an appeal and disposed of in the same terms, the relief it sought being fully answered by the quantum now fixed.

36. Apportionment of Liability and Terms of Satisfaction:

1. **Primary Liability:** Dr. Jamila Raza is held personally liable, in the sum of **Rs. 5,00,000**, for the breach of the standard of care owed to her patient.
2. **Vicarious Liability:** The Hospital is held liable, in the sum of **Rs. 10,00,000**, vicariously, for the acts and omissions of its medical officer.
3. **Terms of Satisfaction:** Each amount shall be paid within sixty days of this judgment, failing which the same would be recovered under Land Revenue Laws.

DIRECTIONS TO THE SECRETARY, HEALTH DEPARTMENT

In order to prevent the recurrence of such incidents and to ensure accountability for negligence and complacency on the part of the doctors and the hospital, the Secretary, Health Department, is directed as follows:

1. **Safety protocols.** The Secretary, Health Department, shall, within thirty (30) days, issue binding instructions to all public and private hospitals requiring the WHO Surgical Safety Checklist and a documented count of swabs, gauze, mops, needles and instruments before the operation, before closing, and after closing, for every

surgery. The count shall be signed by the scrub nurse, the circulating nurse and the operating surgeon. If the count is incorrect, the surgeon shall not close until the items are accounted for, by search or imaging where necessary staff duly trained and specialized in the relevant field only shall be allowed to be part of the operation team and be allowed to be present in operation theatres, since it involves the risk to the life of the patient.

2. **Never events.** Retained surgical items, wrong-site surgery and wrong-patient procedures shall be reported to the Health Department or the Healthcare Commission within twenty-four (24) hours, and each such incident shall be investigated.

3. **Inquiry in the present case.** An independent medical board shall be constituted to examine the conduct of the doctors and the hospital, and shall submit its report within a fixed period.

4. **Accountability of the doctors.** Disciplinary proceedings shall be initiated against the doctors and staff concerned, and the matter shall be referred to the Pakistan Medical and the Dental Council and the provincial Healthcare Commission, for action proportionate to the findings.

5. **Accountability of the hospital.** The hospital is answerable for the negligence of its staff and for failures of system and supervision. Action shall be taken under the applicable licensing law, which may include a penalty, suspension or cancellation of registration, in accordance with law. Moreover, every hospital, be it private or run by the government, shall ensure by way of proper record to allow only qualified and specialized trained personnel, apart from the Doctors, to enter and be present in the operation theatres.

6. **Compensation and treatment.** The patient shall be provided compensation and free corrective treatment, with the State at liberty to recover the amount from those found responsible.

7. **Medical records.** Hospitals shall maintain operation notes, anaesthesia records and count sheets for a fixed period, and shall furnish copies to the patient on request.

8. **Inspections and audits.** Operation theatres of public and private hospitals shall be inspected regularly, including by surprise visits, and non-compliance shall be penalised.

9. **Complaint mechanism.** An accessible and time-bound mechanism for medical negligence complaints shall be established, and every hospital shall maintain a grievance desk.

10. **Training and supervision.** Doctors and nursing staff shall undergo periodic training in patient safety and infection control, and trainee and junior doctors shall operate only under the supervision of qualified surgeons.

11. **Compliance report.** A compliance report shall be filed through the Registrar within ninety (90) days, and a copy of this judgment shall be sent to the Health Department, the PM & DC and the Healthcare Commission.

37. Needless to state that these instructions are inclusive and not exhaustive, and the Secretary Health would be at liberty to issue such instructions and directions as he may deem fit and necessary.

38. The Civil Appeal is allowed, and the connected Civil Petition No. 788 of 2018 is also converted into an appeal and allowed in the above terms. BH is also entitled for costs.

Announced in open Court on 20/10/ 2026

ISLAMABAD
Arshed/Zainab Qazi, Judicial Law Clerk.
"Approved for Reporting"