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The Legal Doctrine on 'Limitation of Liability' in the Precedent Analysis on Plastic Surgery Medical Malpractice Lawsuits

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This study intended to review the precedents on plastic surgery medical malpractice lawsuits in lower-court trials, classify the reasons of 'limitation of liability' by type, and suggest a standard in the acknowledgement of limitation of liability ratio. The 30 lower-court's rulings on the cases bearing the medical negligence of the defendants acknowledged the liability ratio of the defendants between 30% and 100%. Ten cases ruled that the defendants were wholly responsible for the negligence or malpractice, while 20 cases acknowledged the limitation of liability principle. In the determination of damage compensation amount, the court considered the cause of the victim side, which contributed in the occurrence of the damage. The court also believed that it is against the idea of fairness to have the assailant pay the whole compensation, even there is no victim-side cause such as previous illness or physical constitution of the patient, and applies the legal doctrine on limitation of liability, which is an independent damage compensation adjustment system. Most of the rulings also limited the ratio of responsibility to certain extent. When considering that the legal doctrine on limitation of liability which supports concrete validity for the fair sharing of damage, the tangible classification of causes of limitation of liability suggested in this study would be a useful tool in forecasting the ruling of a plastic surgery medical malpractice lawsuit.

Keywords: Plastic Surgery; Malpractice; Lawsuits; Liability

INTRODUCTION

In cases where the court finds in favor of patients in medical malpractice lawsuits, the amount of monetary damage initially claimed by patients often significantly differs from that finally awarded by the courts. The application of the "fair share of damage," which is commonly accepted as the basic principle of the damage compensation, may explain such a difference. The principle rests on the logic that the liability of compensation imposed on defendants who caused damages should be restricted to injuries aroused as a result of his or her act of omission or negligence and that awarding monetary damages for injuries not reasonably related to defendants' act of omission or negligence is not in accordance with the principle of equity. The principle is also called the 'limitation of liability'. In general, the principle of law relevant to the limitation of liability refers to judicial precedents in which the courts compensate patients with a partial reduction of the damages caused by illegal acts, even when there is no negligence on the part of patients in order to practice the philosophy of the equitable share of damages in the damage compensation act.

Since plastic surgery has gained popularity, legal disputes related to its adverse effects have greatly increased. According to a report based on the damage relief data of the Korea Consumer Agency, the recompense data of the Mutual Aid Association of the Korean Medical Association, and the recompense data of liability insurance for medical accidents, the total compensation amount for 5,110 cases in medicine, dentistry, oriental medicine, and pharmacy between 2008 and 2010 was about 58.7 billion Korean won (KRW), of which the total compensation in plastic surgery was 426,749,000 KRW. It thus accounted for 7.27% of the total compensation and 377 cases, placing it in third place, following orthopedics and internal medicine (1). Although plastic surgery is designed to improve the appearance of the body, individual medical practices are composed of invasive treatments, which can lead to unexpected complications or adverse reactions.

Recent judicial precedents indicate that if plastic surgeries were performed at the request of patients for cosmetic purposes, hospitals were not held responsible for 100% of the damages, irrespective of the severity of adverse reactions, excluding exceptional cases, such as operations by non-specialists or fatal incidents of malpractice. The precedents are based on the ideas that 1) commanding plastic surgeons to compensate for all the damages of bad outcomes in medical malpractice lawsuits could adversely affect their future medical activities; 2) medical

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practices have a lifesaving nature and medical malpractice is not intentional; and 3) certain inevitable outcomes might occur due to the constitutional predispositions of patients and the limitations of the modern clinical medicine. Therefore, it is considered desirable for the damages to be shared appropriately by plastic surgeons and patients (2,3). In this case, the main issue is the 'range of liability' of plastic surgeons. In general, since the recognition of the limitation of liability and its ratio are dependent on the discretion of judges with authority over fact-finding proceedings, it is difficult for litigants to estimate the amount of monetary damages; predictability is significantly low, even though the discretion of judges greatly affects decisions on the amounts of damage.

Considering that the principle of law on the limitation of liability seeks equitable share of damages, it seems impossible to present a standard applicable to every case. This study, however, attempts to propose some predictable factors of limitation of liability in the plastic surgery malpractice lawsuits. This study may serve as a useful resource, based on which litigants may predict the amount of damages. Therefore, the study also recognizes the number of cases where the courts' limited liability in the course of reviewing judicial precedents on plastic surgery in court trial courts and typological classifications of the reasons for limitation of liability.

MATERIALS AND METHODS

This study deals with cases where medical persons were found liable for medical malpractice. To be more specific, this study will analyze civil judgments on malpractice related to cosmetic surgery performed by plastic surgeons in the district courts in Korea between 2000 and 2013. This study, however exclude cases of general physicians, plaintiff claims dismissal, mediation, and data recognition. The cases in this study include 30 cases with full texts of judgments. This study will analyze the difference between the amount claimed and the amount awarded and the reasons for the limitation of liability recognized in such judicial precedents based on the data.

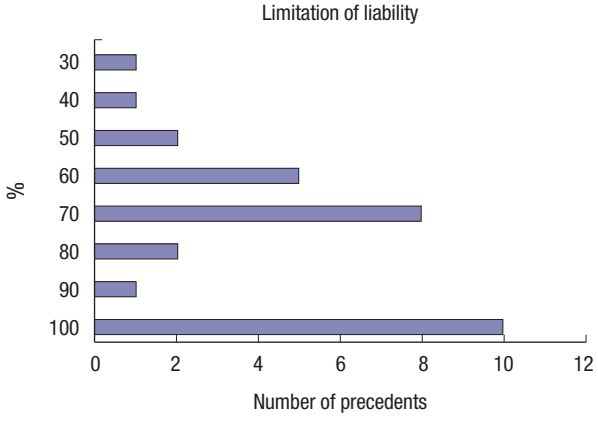

Fig. 1. The ratio of limitation of liability and number of judicial precedents. The ratio of the limitation of liability means full liability of a medical staff member.

RESULTS

Of the judicial precedents on the matter of malpractice in plastic surgery in trial courts that were reviewed, the least liability ratio of defendants was 100% (plaintiffs found liable for 0% of the damages), and the highest ratio of limitation of liability was 30% (plaintiffs found liable for 70% of the damage) (Fig. 1).

The reasons for limiting defendants' liability in the court rulings on the matter of medical malpractice can be divided into the patient reason and those with plastic surgeons. In addition, patient reasons were subdivided into no-fault and fault reasons (Table 1).

In detail, the court reduced the amount of damages based on the following no-fault reasons on the part of patients: first, adverse reactions generally occurred in patients with 'specific constitutions'; second, although a patient suffered from adverse reactions in surgery, his or her symptoms improved, compared to those before surgery (partially attaining the goal of cosmetic surgery), or could be corrected or improved with future treatments. The reduced the amount of damages based on the following reasons attributable to patients: first, after the occurrence of symptoms, patients ignored them and did not seek proper immediate treatment; second, patients received multiple plastic surgeries simultaneously in a short period of time; third, the previous surgeries that patients received were presumed to affect a present surgery, causing adverse reactions. However, in the reasons of the plastic surgeon, the court found that medical staffs were not fully liable for damages, even in cases when they actively attempted to resolve the problem, such as offering free fee reoperations and when adverse reactions occurred in a patient who received a free fee operation without a formal contract (Table 1).

Judicial precedents that recognized 100% malpractice in plastic surgeons without limitation of liability were those with obvious malpractice and negligence. Such cases include infection caused by the lack of antibiotics, adverse reactions that led to irreversible permanent functional disorders even with future

Table 1. Reasons of judicial precedents with "limitation of liability"

Reasons in favor of patients		Reasons in favor of surgeons
No-fault reasons of patients	Fault reasons of patients	
• Constitutional predisposition of patients • Partial improvement of symptoms by surgery • Possible to improve symptoms with future treatments	• Symptoms left unattended • Multiple surgeries in a short period of time • Correspond to reoperations • Surgery from the non-plastic surgery specialist for the cost	• Free fee operations without a formal contract • Free fee operations by plastic surgeons to resolve complications

Table 2. Reasons for 100% defendant liability

Reasons for 100% defendants' liability	Cases
• Deformity of the face after genioplasty and sensory exinction	1
• Inflammation, infection and deformity of the nose after nose surgery	1
• Facial nerve injury after mandible angle resection and reduction malarplasty	1
• Deformity after breat reduction (necrosis, loss of tissue, asymmetry and scarring)	1
• Scar caused by lip laceration by drill during facial bone contouring surgery	1
• Paresthesia and deformity after facial bone contouring and face lifting	1
• Traumatic small bowel perforation after abdominal liposuction	1
• Remaining of gauze during augmentation mammoplasty	1
• Lagophthalmos and inflammation after upper eyelid surgery	1
• Inflammation, infection, paresthesia, scarring, and deformity after liposuction	1

treatments (deficits in sensory and motor functions), and morphologic abnormalities (scars, deformities, effacements, depressions, and so on) (Table 2).

In the cases where the plaintiff was not able to establish clear causation between the malpractice of plastic surgeons and injuries on their part, it seems more likely that the courts limited liabilities of the dependent in cases where liability was imposed on medical staffs by the application of presumption of risk, rather than in cases without its application.

DISCUSSION

Since it is very difficult for patients to understand the technicalities of medical practice and to prove its occurrence scientifically and rigorously or to establish causation between the acts of the dependent and the damages in medical malpractice lawsuits, the court applies the established precedent theory to ease the burden of proof on patients. In other words, if medical malpractice is proven and if there is no other causes that account for bad outcomes, based on the common sense of ordinary people, the court may find plastic surgeons liable for such damages with the presumption of causal relationships between medical malpractice and outcomes (4). As such, since establishing illegal acts such as medical malpractice, injuries on the part of plaintiffs and causal relationships between the two may determine the outcome of lawsuits, primary attention has been paid to the issue of establishing the causation in medical malpractice lawsuits, and it has been continuously discussed. Once the causal relationships between malpractice by medical staffs and injuries are established, the calculation of detailed damage claim amounts becomes the next issue (5).

In general, in civil cases when damage is caused or made worse not only by a medical malpractice but also by patient's acts of omission or negligence, the plaintiff is deemed responsible for a portion of damage and the court reduces the amount of compensatory damages of the defendant, out of respect for the fair share of damages, and is called "comparative negligence." Korean Civil Law Section 396 stipulates that when liability and the amounts of damages are decided, plaintiff's acts of omission or negligence shall be considered (6). Therefore, the court decides the range of compensation in consideration of the plaintiff's acts of omission or negligence and the establishment of causal relationships; the amounts are reduced according to comparative negligence, and damages for non-mental injuries, such as solatium, are added (7).

Although there is also an adjustment step of damage claim amounts in medical malpractice lawsuits, the precedents applied "the principle of law of limitation of liability," not comparative negligence, so that patients, the defendants, were compensated after the partial reduction of damages. Comparative negligence presumes that patients have the duty to mitigate damages and not to cause and expand them; thus, it reduces damage claim amounts when such duty is violated. In contrast, the principle of law on the limitation of liability is one in which the court discretionarily reduces damage claim amounts, after considering the medical histories or specific constitutions of patients, even when they are without fault, as in the violation of liability, which is fundamentally different from comparative malpractice (8,9).

In medical malpractice lawsuits, even when patients commit no intentional act of omission, the liability of medical staffs may be reduced. The loss compensation function of patients of illegal acts is partially limited in light of the legitimacy or relevance of each case (10,11), and a study has suggested that this approach should be restrained due to the absence of a substantive legal basis (12). According to precedents, however, "overwhelming (inevitable) negative outcomes often occurred due to previous illnesses or incompleteness of medicine itself, and the causes of those outcomes were often unclear in medical lawsuits, so that individual plastic surgeons cannot be held to be liable for the incompleteness of medicine itself, and these factors need to be considered within the range of liability." In addition, when patients' constitutional predispositions or the intervention of contingency affected negative outcomes, despite the absence of patient negligence, it is unfair to impose the full compensation for damages that were caused by patients themselves on plastic surgeons. It is therefore reasonable to reduce them by a certain amount, within a sensible range, based on the principle of equity (10,11).

Just as the reasons for comparative malpractice and the ratio are determined by the full authority of fact-finding proceedings, the recognition of the limitation of liability and the determination of its ratio also depend on the full authority of fact-finding proceedings. According to the precedents of trial courts, the factors affecting the limitation of liability were not consistently applied with a reasonable standard.

There were cases in which the recognition of limitation of lia-

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bility differed in the appellate trial from that of the first trial. A patient who received reduction mammoplasty, face lifting, blepharoplasty and genioplasty sued a plastic surgeon for postoperative scars in the breast and on the face, ectropion, and lagophthalmus. In the first trial, the court found 100% malpractice, without limitation of the defendant's liability, whereas in the second trial, it limited the liability ratio to 70%, in consideration of prior chin and in the upper and lower eye lid surgery of the plaintiff and the plaintiff's attempts to receive multiple plastic surgeries within a short period of time (10). In another case, the court ruled the full liability of the defendant in the first trial of a damage suit for a deformity of the nose after rhinoplasty, deciding that this deformity was caused by the surgical malpractice of the defendant. However, the court in the second trial focused on the following facts: the plaintiff went to the defendant because of fee; the deformity of the nose of the plaintiff was not obvious. Although highly advanced, considering the uncertainty of medicine, medical practices, particularly surgeries, are necessarily accompanied by risks, and patients should have also assumed the risks of such operations. The surgical outcomes of cosmetic surgeries are likely to be different from the subjective expectations of patients, which make them dissimilar to those of general medical practices. The court judged that it was against the principle of equity to impose all damages on the plastic surgeon, even though the deformity of the plaintiff's nose was caused by the corresponding surgery, and it limited the range of defendant's liability as 70% (11).

The recognition of the limitation of liability and deciding its ratio fall under the authority of fact-finding proceedings, and it is difficult to find a predictable and logical standard. According to the precedents, it was not particularly necessary to judge all medical history, even though it was recognized, and the precedents assumed that reasonable judgments could be made by considering various factors, including the severity of previous disease, the areas and degrees of damages, correlations between medical histories and all damage, progress of treatments and the ages, jobs, and health conditions of patients (9). In this case, an excessive right of discretion may be conferred to judges, who may not be able to resolve detailed matters appropriately. Therefore, a study has proposed rejecting the present principle of law on the limitation of liability (6). However, it is clear that since this principle considers the accompanying risks of surgery, it is difficult to deny its necessity.

Logically, since the factors related to damages are in a proportional causal relationship with damages, a proportional decision should be made in deciding the range of compensation, based on objective evidence. However, cases exist in which this is impossible or in which the cost is too high, even though it is possible through scientific analyses. Therefore, these cases should be considered in limitation of liability, and the discretion of the court shall be accepted to some degree in order to secure their detailed relevance, even if objective evidence is not clear. Nevertheless, this does not mean that the court has full discretion. Instead, the amounts should be reduced within a reasonable range, according to the principle of equity (10). Of course, multiple studies have attempted to classify the factors on the limitation of liability that have been applied in medical malpractice lawsuits. Since these studies, however, were performed in certain clinical departments with different characteristics, it is inappropriate to apply them directly to the plastic surgery field, which has different characteristics. Therefore, this study secured the full texts of written judgments, after the selection of medical malpractice lawsuits that were related to plastic surgery field and identified the following criteria in dealing with the issue of limitation of liability. If a plastic surgeon's malpractice partially contributed to adverse reactions, the defendants' damage compensations by the limitation of liability were determined by the following: 1) surgeons fully explained the risks to patients before surgery; 2) in the case of purely cosmetic surgery, a patient assumes side effects to some extent; 3) unlike general medical practice, the results of the surgery and the subjective expectations of the patients can vary; 4) they took preventive measures against adverse reactions; 5) they attempted to resolve the adverse reactions when they occurred; 6) surgery fees were pre-paid; 7) finally, patients can chose a kind of surgery and hospital after being fully informed about surgery. In addition, it is necessary to realize that the limitation of liability also considered the usual differences between surgical outcomes and patients' subjective expectations in cosmetic surgery. However, although the reasons for the limitation of liability were same, the ratios were decided differently, depending on the issue, and ratio of the limitation of liability was dependent on specific factors. Since the court must judge each case based on special reasons with specific relevance, it will be impossible to expect the court to apply uniformly the limitation of liability and its ratio.

Finally, the relevant explanations of surgery must be pre-operationally given by plastic surgeons to limit liability, despite medical malpractice. It is practically impossible for patients to exert their rights of self-determination in the selection of or the decision about various medical practices without professional medical knowledge. Therefore, although patient contributions to adverse outcomes are acknowledged, it is improper to use it as a reason to limit the liability of defendants, if an appropriate explanation is not given. The precedents have also clarified that a proper explanation from the medical staff has to be given in advance. Thus, despite the recognition of negligence by patients, proper explanations by medical staff are considered in judging this negligence as a reason for the limitation of liability, so that plastic surgeons should always keep this in mind (11,12).

In conclusion, plaintiffs are greatly interested both in "obtaining monetary damage compensations" as well as "the amount of

damage." On the issue of "amount of damage compensation," this study attempted to present the reasons for the limitation of liability. The reasons were classified into factors related to patients, such as patient specific conditions, surgical histories, neglecting symptoms and the probability of improvement after re-operation as well as a factor not related to patients, such as free fee operation. However, since each reason is not equally applied in legal disputes, but reevaluated in detail by judges, obtaining relevance in surgeries based on common sense, even in cases of complications, may be a way in which plastic surgeons can limit their liability in medical malpractice cases.

DISCLOSURE

The authors have no potential conflicts of interest to disclose.

AUTHOR CONTRIBUTION

Conception and coordination of the study: Hong SE, Park BY. Design of ethical issues: Hong SE, Park BY. Acquisition and cleansing of data: Hong SE, Park BY. Data review: Hong SE, Park BY. Statistical analysis: Pak JH. Manuscript preparation: Hong SE, Park BY. Manuscript approval: all authors.

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