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Addressing Challenges to access to Justice for Victims of Medical Malpractice in Nigeria

FLORA ALOHAN ONOMRERHINOR
University of Benin, Benin City, Nigeria

ADEJUMO OMOBOLAJI JUBRIL
University of Medical Sciences, Ondo State, Nigeria

Abstract. Medical malpractice litigation provides an avenue for victims of malpractice to get justice and restore confidence in the health care system. However, a close examination of medical malpractice litigation in Nigeria reveals some challenges to the country's justice delivery. Although substantive law on medical negligence is relatively well developed, the practical ability of patients to pursue claims is limited due to procedural challenges. The financial burden associated with expert reports and the absence of structured compensation mechanisms leaves many injured patients without redress. This paper examines how these challenges can be surmounted. It adopts an analytical *legal research* approach. It reviews extant literature on the subject and compares the Nigerian situation with jurisdictions like the United Kingdom and South Africa. It finds the Nigerian system for financing medical negligence claims inadequate. Claimants bear nearly all initial costs, especially the procurement of medical expert reports which are often expensive due to limited availability and professional reluctance to testify. legal aid offers almost no support for tort-based medical claims. Professional indemnity insurance, although encouraged, is not mandatory and sparsely implemented among private hospitals and individual practitioners. Comparative insights reveal that countries with conditional fee arrangements, state-backed insurance schemes and statutory compensation funds experience fewer access barriers. It concludes that the present financial architecture for medical malpractice litigation in Nigeria is inadequate and constitutes significant barrier to access to justice and recommends a combination of legislative and policy reforms such as compulsory malpractice insurance, establishment of statutory compensation fund and regulated third-party funding.

Keywords: Access, Funding, Justice, Malpractice Negligence, Third party.

1. Introduction

Healthcare delivery is an essential aspect of human rights[1] which can be violated in cases of medical malpractice or avoidable medical errors. Healthcare delivery is a fundamental component of social welfare and human rights.[2] Patients who seek medical care reasonably expect to receive treatment that meets established professional standards. However, medical malpractice is an inevitable aspect of healthcare systems worldwide, often resulting in avoidable injury, disability, or death.[3] In such instances, access to justice becomes critical for victims, not only to obtain redress but also to ensure accountability and deter future negligence or malpractice.[4]

In Nigeria, medical malpractice is gaining prominence due to increase awareness of patients' rights, rising

[1] Article 12, International Covenant on Economic Social and cultural Rights, 1966

[2] World Health Organization, 'Human Rights' (World Health Organization 1 December 2023), available at <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health> accessed November 30, 2025

[3] World Health Organization, 'Patient Safety' (World Health Organization 1 December 2023), available on <https://www.who.int/news-room/fact-sheets/detail/patient-safety, accessed February 15, 2026.

[4] G J Hoag, 'Understanding Your Rights: A Patient's Guide to Justice in Medical Malpractice Cases' available at https://gregoryjhoag.com/understanding-your-rights-a-patients-guide-to-justice-in-medicalmalpracticecases/ accessed February 15, 2026.

healthcare demands, and more publicised instances of substandard medical practice.[5] Despite the legal recognition of medical malpractice under tort law, as well as statutory frameworks such as the National Health Act 2014, the Federal Competition and Consumer Protection Act 2018, and the Patients' Bill of Rights 2018, getting justice through medical malpractice litigation is not easily accessible for financially vulnerable claimants[6] as victims often encounter serious barriers in their pursuit of justice.[7] These barriers include complex litigation procedures, high costs of litigation, judicial delays, limited availability of legal aid and difficulties in securing credible medical expert testimony due to financial constraint.[8] As a result, many victims are left without effective remedies, undermining trust in both the healthcare and judicial systems.

Although the Nigerian legal system provides avenues for patients to seek redress for medical malpractice, the reality is that access to justice is elusive for many victims.[9] The adversarial nature of litigation which is largely rooted in common law principles of tort, places the burden of proof heavily on the patient, who must demonstrate that a healthcare provider owed a duty of care, breached that duty, and caused harm as a result.[10] Often time expert testimonies are required and this becomes a disadvantage for victims who lack resources or technical knowledge.[11] Moreover, professional solidarity among medical practitioners frequently hinders the availability of independent expert testimony.[12] Compensation mechanisms, where available, are often inadequate and not effectively implemented across public and private institutions.[13] The consequence of the above is a justice gap where victims of medical malpractice are left without fair remedies and weakening public confidence in healthcare governance. Despite these systemic challenges, scholarly research addressing financial barriers faced by victims in Nigeria is limited. This paper seeks to bridge this gap by exploring the legal framework for financing medical malpractice litigation in Nigeria and proposing legal and policy reforms that includes victim compensation and third-party funding.

This paper is divided into six sections. The first introduces the subject matter and outlines the central problem which the paper seeks to address. The second contains the conceptual framework. it explains the main ideas and principles, including the meaning of medical malpractice, the idea of financing litigation, and the broader issues connected to access to justice. The third section contains a brief description of some laws as they relate to malpractice litigation in Nigeria. The fourth examines some of the major obstacles or challenges surrounding the financing of medical malpractice litigation in Nigeria. It considers the practical realities confronting claimants and highlights the gaps within the existing legal framework. The fifth section draws useful comparisons from other jurisdictions to illuminate possible alternatives and the sixth section considers proposals or reform options for improving access to justice for victims of medical malpractice seeking legal redress and concludes that it is only by addressing these challenges that the barriers to access to justice can be effectively removed.

2. Conceptual Framework

2.1. Medical malpractice

Medical malpractice refers to a failure by a healthcare professional to exercise the degree of skill and care expected in the circumstances, resulting in injury, disability or death.[14] In law of tort, liability arises where a claimant establishes duty of care, breach of duty, causation and compensable damage.[15] The principle that a doctor owes a duty of reasonable skill and care is well established in Nigerian jurisprudence.

[5] S Sodunke, 'Medical Negligence and Patient Safety in Nigeria: What the Law says in 2026' (Mondaq, 20 January 2026) available at https://www.mondaq.com/nigeria/healthcare/1733324/medical-negligence-and-patient-safety-in-nigeria-what-the-law-says-in-2026, accessed February 15, 2026.

[6] C V Odoeme, D Ugwuja & C S Onah, 'Medical Error Litigation in Nigeria: A Proposal for Change' (2022) 42(3-4) JLM 111-121 https://doi.org/10.1080/01947648.2023.2238564

[7] M C Opara, 'Legal Framework for Proof of Medical Negligence in Nigeria' (2025) 19(3) Asian Journal of Advanced Research and Reports 21.

[8] K Adegboyega, 'Medical Negligence in Nigeria and the Obstacles to Litigation' (2023) 1 MIMJRI 183

[9] B N Okpalaobi & C N Nzewi, 'Medical Malpractice and Negligence in Nigeria: Human Rights Enforcement as a Remedy' (2021) 3(2) IJOCLLEP 194.

[10] Opara (n. 7)

[11] Adegboyega (n. 8) p. 190

[12] Sodunke (n. 5)

[13] E Collins, U C Emenike, C Adeke, M Natukunda & L Ronald, 'An Appraisal of Contemporary Issues in Proof of Medical Negligence in Nigeria' (2024) 6 KIU Law Journal 327.

[14] Hoag (n. 4)

[15] Collins *et al* (n. 13) p. 336-340

In *Ojo v Gharoro*,[16] the Supreme Court reaffirmed that the law does not demand the highest level of professional competence but requires that practitioners act in accordance with standards accepted by responsible members of the profession.[17] This approach draws from the classical English decision in *Bolam v Friern Hospital Management Committee*,[18] where the court held that a doctor is not negligent if acting in accordance with a practice endorsed by a responsible body of medical professionals.[19]

Therefore, medical malpractice is said to occur when a doctor, nurse, or hospital fails to exercise the standard of care that a reasonably competent health professional would have provided under similar circumstance. In legal terms, medical malpractice is established when four key elements are proven: duty of care, breach of that duty, causation, and damage.[20] In Nigeria, cases such as *Ojo v. Gharoro & Ors (supra)* and *Okonkwo v. Medical and Dental Practitioners Disciplinary Tribunal (2001)*[21] have reinforced the principle that healthcare professionals owe patients a duty to exercise reasonable skill and care in their professional conduct.

In practice, proving malpractice in Nigeria is heavily dependent on expert evidence, clinical documentation, and the ability of litigants to finance the technical costs associated with complex litigation. These financial demands directly influence access to justice and highlight the importance of examining how litigation is funded.

2.2. Litigation Financing

Litigation financing implies the mechanisms, whether formal or informal, through which parties secure the financial resources necessary to initiate and sustain legal action.[22] In medical malpractice suits, litigation financing typically covers court filing fees, legal representation, expert witness fees, medical reports, transportation, and related incidental expenses.[23] In some jurisdictions, financing models include contingency fee arrangements, third-party litigation funding, legal expense insurance, public legal aid, and institutional compensation schemes.[24] In Nigeria, these financing options exist in limited and often fragmented forms. The Legal Practitioners Act traditionally restricts contingency fees, though modern practice particularly in civil claims has increasingly accepted conditional fee arrangements.[25] Legal aid is statutorily available through the Legal Aid Act 2011, yet medical negligence claims rarely qualify due to statutory exclusions and funding limitations.[26] Where professional indemnity insurance exists, it primarily benefits practitioners rather than patients. Understanding financing is essential because the cost of litigation often determines whether a victim can even enter the justice system.

2.3. Access to Justice

Access to justice embodies the ability of citizens to seek and obtain effective remedies through formal or informal legal institutions.[27] It demands affordability, fairness, absence of discrimination, and reasonable expedition.[28] The Nigerian Constitution recognises access to justice as an essential element of fair hearing

[16] *Ojo v. Gharoro & Ors* (2006) 2 SCM 113
[17] A Werner, 'What Is Negligence? Understanding the Reasonable Person Test and Different Types of Negligence'(Werner, Hoffman, Greig & Garcia 3 August 2024) available at https://wernerhoffman.com/blog/what-is-negligence/ accessed November 15, 2025.
[18] Bolam v Friern Hospital Management Committee [1957] 1 WLR 582.
[19] *Ojo v. Gharoro & Ors* (supra) n. 16.

[20] Collins, (n.15) p. 338
[21] *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal* (2001) 7 NWLR (Pt.711) 206

[22] Mintos, 'Understanding Litigation Funding: A Comprehensive Guide' (Smart Finance 17 July 2024) available at https://www.mintos.com/blog/litigation-funding/.html accessed 18 February 2026
[23] Burnett & William, 'Contingency Fees and Beyond: Understanding Attorney Payment in Malpractice Cases' available at https://burnettwilliams.com/medical-malpractice-attorneys-get-paid-guide/accessed 18 February 2026.
[24] W van Boom, 'Third-Party Litigation Funding in Europe' (2014) 3 Journal of European Tort Law 102.

[25] Legal Practitioners Act, Cap L11 LFN 2004.

[26] Legal Aid Act 2011, s. 8–10.

[27] A Gutterman, 'Older Persons' Access to Justice (Oakland CA: Older Persons' Rights Project, 2022), available at SSRN: https://ssrn.com/abstract=3889752 or http://dx.doi.org/10.2139/ssrn.3889752 021722 accessed 18 February 2026
[28] O Ayenakin, 'Access to Justice in Nigeria: The Challenges, Opportunities and The Future of Legal Practice' available at https://tau.edu.ng/assets/oer/conferences/74_access-to-justice-in-nigeria-the-challenges-opportunities-and-the-future-of-legal-practice_Conference_Presentation_File.pdf accessed 18 February 2026

under section 36.[29] In medical malpractice claims, access to justice is shaped not only by legal rules but also by financial realities. Previous studies such as that carried out by Odunsi, have shown that victims most of the times abandon claims due to the cost of expert reports, difficulty securing lawyers willing to accept complex malpractice briefs, and the perception that litigation is too expensive and prolonged.[30] These challenges highlight the need for an examination of how financing models either facilitate or inhibit access to justice.

2.4. Professional Indemnity Insurance

Professional indemnity insurance, often known as errors and omissions or professional liability insurance, protects businesses and professionals against legal liability and financial losses arising from alleged negligence, errors, or omissions in their services.[31] Professional Indemnity insurance is also called medical malpractice insurance. It serves as a critical risk management tool for healthcare practitioners. It covers legal defence costs and compensation claims from clients for financial loss or damage.[32] Professional indemnity insurance plays a central role in the management and financing of medical malpractice claims because it provides a financial cushion for healthcare practitioners when civil actions are instituted against them for alleged negligence.[33]

2.5 Legal Aid and State-Supported Financing

Legal aid is the provision of free or low-cost legal services to individuals who cannot afford legal representation. It ensures that such vulnerable group have access to the justice system and equality before the law.[34] It is typically funded by governments or charitable organizations and is a cornerstone of protecting human rights in both criminal and civil matters.[35] Legal aid is one of the significant state-supported financing mechanisms for ensuring access to justice for poor and vulnerable individuals in Nigeria. However, its usefulness in medical malpractice litigation is limited. Although the Legal Aid Act 2011 provides for civil representation, its coverage is narrow and restricted to matters involving fundamental rights under the Constitution.[36] In Nigeria, tort actions including medical negligence or malpractice claims fall outside the core mandate of the Legal Aid Council, leaving victims to shoulder the financial burden of pursuing complex and expensive litigation.[37]

2.6 Expert Evidence

An expert is someone qualified with special knowledge, skill, training, and experience. An expert can express an opinion based on information that they have personally observed, or information that was provided by others.[38] Expert evidence occupies a central place in medical malpractice litigation because courts must rely on individuals with specialised knowledge to determine whether a healthcare professional acted below the required standard.[39] In Nigeria, judges consistently emphasise that questions relating to diagnosis, treatment decisions, or medical protocols lie outside the realm of ordinary knowledge and therefore require expert explanation before liability can be established.[40]

2.7 Compensation Models

[29] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

[30] B Odunsi, 'Medical Negligence and Its Litigation in Nigeria' [2023] Beijing Law Review 1090

[31] IGI, 'Professional Indemnity, available at https://www.iginigeria.com/products/non-life-products/general-business/professional-indemnity/accessed 18 February 2026

[32] M C Mathur 'Professional Medical Indemnity Insurance - Protection For The Experts, By The Experts' (2020) 68(1) Indian J Ophthalmol 3

[33] ibid

[34] B C Malathesh, P L Nirisha, C N Kumar, R K Madegowda, B Vajawat, C Basavarajappa & S B Math, 'Free Legal Aid for Persons with Mental Illness and Other Marginalized Group of Population, (2021) 59 Asian Journal of Psychiatryavailable at https://www.sciencedirect.com/science/article/pii/S1876201821001106 accessed 18 February 2026.

[35] National Legal Service Authority 'Legal Aid' available at https://nalsa.gov.in/legal-aid/ accessed 18 February 2026

[36] Legal Aid Act 2011, s. 8–10.

[37] Legal Aid Council, Nigeria (LAC) 'Legal Aid Council Functions and Mandate' available at https://legalaidcouncil.gov.ng/function-and-mandate/#:~:text, accessed 18 February 2026.

[38] JES 'Expert Witnesses Basics' available at https://supremecourtbc.ca/civil-law/trial/expert-basics#: accessed 18 February 2026

[39] T Babafemi 'Access to Justice for Victims of Medical Negligence in Nigeria: An Evaluation of Legal and Institutional Barriers' (2022) 14(1) Journal of Contemporary Legal Issues in Nigeria 112, F Tafita, 'Accessing Justice for Medical Negligence Cases in Nigeria and the Requisite for No-Fault Compensation' (2017)10(2) Journal of Private and Comparative Law 77.

[40] *Ojo v Gharoro* (2006) 10 NWLR (Pt 987) 173.

In medical malpractice litigation, compensation model refers to the framework, formula, or system used to determine the financial amount awarded to patients or victims after proving that a healthcare provider's negligence caused them harm.[41] The goal is to make the patients whole again by compensating them for both tangible financial losses and intangible, non-financial suffering.[42] Compensation for medical injury may be delivered through two broad models: fault-based system**s** and no-fault or administrative schemes.[43] Each model reflects different philosophies of justice and carries distinct implications for how malpractice claims are financed and resolved.

3. Legal Framework for Financing Medical Malpractice Litigation in Nigeria.

The following legislative enactment are considered because they either help to establish malpractice or could provide some basis for funding through compensation or other means.

3.1The National Health Act (NHA) 2014

This Act recognises patient rights and establishes standards for healthcare delivery in Nigeria. Although the Act provides a foundation for accountability, it does not establish mechanisms for funding or facilitating litigation when those rights are breached. Notably, however, Section 20 mandates record-keeping and creates duties relevant to proving negligence or malpractice, but it offers no financial support for victims seeking legal redress. This absence of litigation-support measures in the NHA represents a significant gap for patients navigating costly malpractice claims.[44]

3.2 The Medical and Dental Practitioners Act (MDPA)

This Act regulates professional conduct and provides a disciplinary tribunal for medical misconduct. However, the Act is disciplinary rather than compensatory. Sanctions imposed by the Medical and Dental Council of Nigeria (MDCN) do not entitle victims to damages and do not reduce the cost of pursuing civil claims. As a result, the disciplinary framework offers limited support for victims, leaving them to finance litigation independently. Commendably, the MDCN provides disciplinary sanctions, but it does not provide for compensation. This institutional gap leaves victims without structured financial support and reinforces the burdens associated with civil litigation.

3.3 The Federal Competition and Consumer Protection Act (FCCPA) 2018

The FCCPA does not directly provide for the funding of medical malpractice claims. Its relevance here lies in the institutions created to enforce its provisions: the Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal (CCPT). Some aspect of FCCPC's functions relates to consumer protection in the health sector and thus has some implications for medical malpractice litigation.[45]

The FCCPC's role is in a collaborative capacity with applicable professional bodies. It investigates and determines whether service providers adequately respect the rights of consumers and the appropriate standards of care in compliance with those rights and provide redress or remedies for injured consumers. The FCCPC's involvement and interest in medical malpractice is premised on the fact that patients are consumers of medical services and must be protected.[46]

The Patients' Bill of Rights is a major achievement of the FCCPC. However, there have been tension between the FCCPC and the MDCN. For instance, in June 2021, the Medical and Dental Practitioners' Council wrote to the FCCPC that its investigation of an alleged medical malpractice case amounted to an encroachment on its statutory mandate which is the regulation of the professions and practice of medicine and dentistry in Nigeria. It also complained that the proposed format of FCCPC's investigation would place registered medical practitioners in violation of the rights of a patient to confidentiality even after their demise, this being a very serious offence under the

[41] Finch Mccranie LLP 'How Compensation Works in a Medical Malpractice Case' available at https://www.finchmccranie.com/compensation-for-medical-malpractice.html, accessed 18 February 2026

[42] ibid

[43] A. Kachalia & M M Mello, 'New Directions in Medical Liability Reform' (2011) 364 New England Journal of Medicine 1564

[44] C Okeke & S Wodi, 'How to seek Justice for Medical Negligence in Nigeria Understanding Medical Negligence' available at https://oal.law/how-to-seek-justice-for-medical-negligence-in-nigeria/#:~:text, accessed 18 February 2026

[45] T O Adegbile, 'Examining the Role of Federal Competition and Consumer Protection Commission (FCCPC) in Regulating the Medical Profession in Nigeria' (2022) 2 RUNJJIL 209.

[46] ibid

Code of Medical Ethics in Nigeria.[47]

3.4 The Legal Aid Act 2011

The Act provides legal assistance to indigent persons, but its mandate excludes tort claims such as medical negligence and because medical malpractice cases often require expert testimony and specialised representation, victims rarely qualify for state-funded support.[48]

3.5 High Court Civil Procedure Rules

The High Court Rules across states in Nigeria allow judges to award costs at the conclusion of litigation, but these retrospective awards do little to assist claimants who cannot afford expert reports or retainers at the beginning of proceedings.[49] Since upfront financing is essential for medical negligence claims, the existing cost-recovery regime is inadequate for ensuring access to justice.

3.6 Nigerian Insurance Industry Reform Act (NIIRA) 2025

Professional indemnity insurance is designed to protect healthcare practitioners from personal financial exposure arising from negligence or malpractice claims.[50] For a long time in Nigeria, indemnity insurance was inconsistently adopted, largely unregulated and underutilised because the MDPA does not mandate compulsory insurance for practitioners.[51] However, the NIIRA 2025 hope to alter this position. It explicitly lists professional indemnity for healthcare providers as a compulsory class of insurance. Hopefully, there should be significant regulatory shift in 2026.[52]

This is a positive development because where a practitioner lacks indemnity coverage, successful claimants must enforce judgments against personal assets or institutions with limited financial capacity.[53] This frequently results in delayed compensation, partial enforcement of judgments or situations where victims receive nothing despite judicial success.[54] Thus, inadequate insurance coverage directly undermines compensation outcomes and discourages lawyers from accepting medical negligence cases on contingency arrangements.

4. Challenges to Access to Justice in Medical Malpractice Litigation in Nigeria

Victims of medical malpractice in Nigeria encounter a wide range of obstacles that significantly limit their ability to seek legal redress or secure fair compensation. Some of these challenges are discussed below.

4.1 Evidentiary Challenge

The burden of proof for medical malpractice is strict. The substantive and procedural requirements for establishing medical malpractice include medical negligence, duty of care, breach of an established duty of care, causation and damage. These create a complex evidential burden for claimants.[55]

Nigerian courts maintain a strict approach to the quality of pleadings and evidence that must be presented at the outset. In many cases, actions fail at the preliminary stages because particulars of negligence are considered insufficient or because no expert evidence accompanies the pleadings.[56] Proof gap is one of the most formidable impediments to successful medical malpractice litigation in Nigeria.[57] The doctrinal legacy of *Bolam v Friern Hospital* (supra), continues to influence Nigerian jurisprudence, with courts frequently deferring to medical professional opinion unless it is manifestly

[47] ibid
[48] ibid
[49] C B Okosa, 'Award of Costs in Judicial Proceedings: When A Legal Practitioner May Be Personally Liable for Payment of Cost' (2022) 3 IJOLACLE 75
[50] Mathur (n. 32)
[51] S U Jibril, I A Baba & A K Maude, 'Critical Analysis of Fundamental Principles of Insurance under the Nigerian Law' (2018)4(7) International Journal of Advanced Academic Research 28
[52] A Fatimah, 'The Law Industry Trends an Overview on Nigerian Medical Negligence: Liability News & Insights' (2022) available at <https://libralawoffice.com/wp-content/uploads/2022/11/An-Overview-of-Medical-Negligence-in-Nigeria-Liability.pdf> accessed 1 December 2025
[53] S Adesina 'Enforcement of Judgments in Medical Negligence Cases: Practical Difficulties and Reform Options' (2022) 6(1) University of Ilorin Journal of Private and Property Law 59.
[54] Fatimah (n. 52)
[55] *Abubakar & Another v Joseph & Another* [2008] NSC 5
[56] M C Opara 'Proof of Medical Negligence in Nigeria: Legal and Procedural Considerations' available at <https://journalajarr.com/index.php/AJARR/article/view/988> accessed 1 December 2025
[57] O A Adejumo & O A Adejumo 'Legal Perspectives on Liability for Medical Negligence and Malpractices in Nigeria' (2020) 35 Pan African Medical Journal 1

unreasonable.[58]

This doctrinal stance amplifies the cost of litigation, as claimants must hire experts capable of contradicting institutional medical testimony. Courts' treatment of medical evidence is heavily shaped by common law traditions, particularly the *Bolam* principle which emphasises adherence to practices accepted by a responsible body of medical opinion.[59]

Although some jurisdictions, following the refinement introduced in *Bolitho v City and Hackney HA*, now require that expert medical testimony be not only responsible but also logically defensible, Nigerian courts continue to apply the traditional *Bolam* approach with limited scrutiny of the reasoning behind expert opinions. As a result, courts may place heavy reliance on medical expert testimony without rigorously examining whether such opinions meet the threshold of logical justification envisaged in *Bolitho*. This can inadvertently reinforce professional solidarity and make it more difficult for plaintiffs to challenge medical malpractice.[60]

Obtaining expert evidence is one of the most challenging aspects of medical malpractice litigation. Specialist doctors, particularly those working in teaching hospitals, often charge substantial fees for medico-legal reports, making expert testimony prohibitively expensive for many claimants.[61] The problem is further compounded by the reluctance of medical practitioners to testify against colleagues, a dynamic that is sometimes described as professional solidarity.[62] As a result, victims frequently struggle to secure impartial experts willing to review hospital records or appear in court and many otherwise meritorious claims fail at an early stage simply because the evidentiary threshold cannot be met.

Furthermore, where expert testimony conflicts, courts tend to prefer the evidence of senior or institutional practitioners, placing an almost insurmountable burden on financially disadvantaged claimants. This contributes to unequal outcomes, as well-resourced defendants such as teaching hospitals can mobilise multiple experts, while victims can rarely afford more than one.[63]

4.2. High Cost of Malpractice Litigation

The financial demand of pursuing a medical malpractice claim is arguably, one of the most difficult hurdles for victims of negligent healthcare in Nigeria.[64] While the high cost of malpractice litigation is a recognised global problem, the impact is more severe in countries where institutional support is weak and individuals must personally finance most aspects of both healthcare and legal services.[65]

In Nigeria, a claimant is confronted with significant expenses even before a medical malpractice litigation begins. One of the earliest requirements is obtaining an independent medical expert report, an essential document because courts rely on such expert testimony when determining whether a healthcare provider breached the expected standard of care.[66] Although contingency fee arrangements could ease the burden for victims, they are not widely embraced in Nigeria. Many legal practitioners are cautious about them because the regulatory environment around them is still evolving.[67] So, victims face significant financial pressure due to cost of legal retainers, filing fees, expert reports, transport and administrative expenses and prolonged case durations.

As a result of the above, only financially stable individuals can realistically pursue claims.[68] This creates a filtering effect where economic status determines access to justice. Inadequate or lack of funding substantially reduces the number of genuine

[58] ibid
[59] ibid
[60] S Bamgboye, 'Judicial Deference in Nigerian Medical Litigation' (2021) 5(2) Journal of Medical Law and Ethics 93
[61] O A Odunsi 'Challenges of Medical Negligence Litigation in Nigeria' (2023) 9(2) Nigerian Journal of Health Law and Ethics 45.
[62] D S Im, C M Tamarelli & M R Shen, 'Experiences of Physicians Investigated for Professionalism Concerns: A Narrative Review' (2024) 39 Journal of general internal medicine 283 <https://pubmed.ncbi.nlm.nih.gov/38051480/>
[63] Bamgboye, (n. 60)
[64] Odunsi (n. 61)
[65] C Kasonde and J Eng (eds), Health Systems in Africa: Community Perceptions and Perspectives (WHO Regional Office for Africa 2020).
[66] Odunsi, (n. 64)
[67] O A Oyeyipo 'Contingency Fees and Legal Practice in Nigeria: Assessing Ethical and Regulatory Constraints' (2021) 5(3) Nigerian Law Review 78
[68] Rosewood Legal, 'The Cost of Litigation in Nigeria: Evaluating the Value of Time Spent in Court | Rosewood Legal' (*Rosewood Legal* December 2023) <https://rosewoodlegal.com/the-cost-of-litigation-in-nigeria-evaluating-the-value-of-time-spent-in-court/?utm_> accessed 1 December 2025

claims reaching trial.[69] Expert evidence is indispensable in malpractice cases, yet it remains one of the costliest elements of litigation. Experts often charge substantial fees for report preparation and court appearances, which are beyond the reach of many victims. This disparity grants defendants especially public hospitals and institutions with institutional support an overwhelming advantage.[70]

Furthermore, lengthy litigation significantly increases the financial weight on claimants. Between frequent adjournments, procedural challenges, and the difficulty of securing expert witnesses, medical negligence suits can remain in court for half a decade or even longer. As Adebayo noted, the cumulative costs of such prolonged litigation often push victims to abandon their claims, even when they possess credible evidence of negligence or malpractice.[71]

In addition to the above, victims of negligence often face additional opportunity costs such as time away from work, transportation expenses, the cost of obtaining medical records. Moreover, there is the emotional and psychological cost of litigation. Medical malpractice litigation can be emotionally draining. Victims often face repeated adjournments, hostile cross-examinations, and re-traumatisation as they recount painful experiences. These emotional burdens encourage premature settlements or abandonment of claims, even where strong evidence exists.[72] Many victims simply lack the psychological resilience or financial stability to sustain prolonged court battles. As a result, litigants withdraw from proceedings not because of lack of merit, but due to financial stress and competing survival priorities.

Unfortunately, state-sponsored financial mechanism like legal aid which would have come handy in situations like this does not because tort actions including medical negligence or malpractice claims fall outside the core mandate of the Legal Aid Council, leaving victims to shoulder the financial burden of pursuing complex and expensive litigation.[73] The absence of adequate coverage by legal aid compounds the emotional and financial strain experienced by patients and their families in cases of medical injury. So, Salmon et al and Iyioha argued that extending public funding to medical malpractice claims is essential for strengthening patient protection and promoting fairness within the healthcare sector.[74] Without such reforms, litigation will remain inaccessible to those who need it most. Adebayo and others have similarly observed that without state support, many victims lack the financial strength to challenge hospitals or powerful healthcare providers, resulting in a system where wrongs go unaddressed and accountability is weakened.[75]

4.3 Weak Institutional Redress and Limited Compensatory Mechanisms

Regulatory bodies such as the Medical and Dental Council of Nigeria (MDCN) provide avenues for disciplinary action, but these mechanisms focus primarily on professional accountability rather than compensation.[76] Even when disciplinary sanctions are imposed, victims must still pursue separate civil litigation to obtain damages a costly and time-consuming process.

Although the Medical and Dental Council of Nigeria encourages doctors to maintain indemnity cover, compliance is far from universal, particularly within private healthcare facilities. Where no insurance exists, victims who win their cases must enforce judgments directly against individual practitioners or poorly funded hospitals. Execution proceedings such as obtaining garnishee orders or attaching property carry their own expenses, which many victims struggle to bear.[77] This inconsistent use of professional indemnity insurance among medical practitioners is yet another factor that complicates financing in medical malpractice claims.

Nigeria relies on a fault-based model. This means that there is no statutory compensation fund or administrative injury scheme, cost or damages can only be awarded at the end of a successful malpractice

[69] A Adebayo 'The Cost of Civil Litigation and Its Implications for Victims of Medical Malpractice in Nigeria' (2020) 8(1) African Journal of Tort Law 33.
[70] ibid
[71] ibid
[72] R Madan, 'Consequences of Medical Negligence and Litigations on Health Care Providers a Narrative Review' (2024) 66 Indian Journal of Psychiatry/Indian journal of psychiatry 317
[73] A Adebayo & A Ugowe, 'Access to Justice through Legal Aid in Nigeria: An Exposition on Some Salient Features of the Legal Aid Act' (2019) 6 Brawijaya Law Journal 141
[74] J W Salmon & S L Thompson, 'Medical Malpractice Crisis: Oversight of the Practice of Medicine' 139; I Iyioha, 'Medical Negligence and the Nigerian National Health Insurance Scheme: Civil Liability, No-Fault or a Hybrid Model?' (2010) 18 African Journal of International and Comparative Law 46
[75] Adebayo & Ugowe (n. 73)
[76] Medical and Dental Practitioners Act 2004, s 15.
[77] S Adesina 'Enforcement of Judgments in Medical Negligence Cases: Practical Difficulties and Reform Options' (2022) 6(1) University of Ilorin Journal of Private and Property Law 59.

suit. [78] Thus, Nigeria lacks alternative compensation mechanisms such as patient compensation funds or no-fault schemes, which are utilised in several jurisdictions to streamline compensation without protracted litigation. The absence of such structures leaves civil litigation as the primary route for redress.[79] Unfortunately, when fewer claims are brought to court, jurisprudential development stalls and without clear precedents, judicial reasoning remains conservative, favouring medical defendants and perpetuating the cycle of low compensation.

Nigeria's current reliance on a fault-based model produces inequitable outcomes and perpetuates delays that weaken confidence in both the justice delivery system and the health sector.[80] These financial realities also discourage many lawyers from specialising in medical malpractice work and because defendants are not always insured and recovery of costs is uncertain, practitioners often regard these cases as financially risky. As a result, fewer lawyers are willing to take them on, further narrowing access to justice for victims.[81]

5. Comparative Insights

In other jurisdiction like the United Kingdom and South Africa, the approach to handling and financing medical malpractice claims is far more organised and patient-centred placing little burden on the litigants.[82] In jurisdictions with well-developed medical liability systems, such as the United Kingdom, indemnity schemes are not only compulsory but embedded within the broader health governance structure. For instance, the National Health Service operates a state-backed indemnity arrangement. This arrangement ensures that injured patients have a clear and predictable avenue for compensation while shielding practitioners from personal financial ruin.[83] The availability of indemnity coverage in the United Kingdom has helped to shape litigation pattern, encouraged early settlements and reduced the adversarial burden on individual clinicians.

In the United Kingdom, a key part of this system is NHS Resolution, the body that manages claims arising from treatment in the National Health Service. Rather than relying solely on adversarial court battles, NHS Resolution investigates complaints, negotiates settlements, and works with hospitals to address underlying problems. This structure helps to streamline compensation and reduces the hostility that often accompanies negligence disputes.[84]

The UK has also developed funding options that ease the financial strain on individuals seeking redress. One of the most notable is the conditional fee arrangement, widely known as the "no win, no fee" model.[85] Under this arrangement, a claimant is not required to pay legal fees upfront; payment only becomes due if the case is successful. This system opens the door for individuals who might otherwise lack the resources to challenge negligent medical care.

In addition, many people have access to legal expense insurance, usually as part of common home or motor insurance policies. This insurance can cover legal costs involved in pursuing a claim, giving claimants a further means of support where needed. Taken together, these mechanisms NHS Resolution, conditional fee arrangements, and legal expense insurance create a framework that reduces financial obstacles and gives patients a realistic opportunity to seek compensation. This blend of institutional support and flexible funding has made medical negligence claims more accessible across different income groups in the UK.[86]

If you compare the above to Nigeria, there is a stark contrast. Although professional indemnity insurance is

[78] Oluwakemi Mary Adekile, 'Compensating Victims of Personal Injuries in Tort: The Nigerian Experience in Fifty Years' (2013) SSRN Electronic Journal https://ssrn.com/abstract=3111539 or http://dx.doi.org/10.2139/ssrn.3111539.
[79] Ibid
[80] Kachalia A and Mello MM, 'New Directions in Medical Liability Reform' (2011) 364 New England Journal of Medicine 1564
[81] C E Aniekwe 'Why Lawyers Avoid Medical Negligence Litigation in Nigeria: An Economic and Professional Analysis' (2021) 4(2) Journal of Medical Law and Bioethics 102.
[82] J O Ezejiofor 'Barriers to Medical Negligence Litigation in Nigeria' (2022) 14 UNIZIK Law Review 88.
[83]NHS Resolution, 'Clinical Negligence Scheme for Trusts' available at https://resolution.nhs.uk/services/claims-management/clinical-schemes/clinical-negligence-scheme-for-trusts/, accessed 18 February 2026
[84] NHS, 'About NHS Resolution' available at https://resolution.nhs.uk/about/, accessed 18 February 2026
[85] JFLAW, 'What Is A Conditional Fee Agreement?' available at https://www.jflaw.co.uk/legal-glossary/conditional-fee-agreement/, accessed 18 February 2026
[86] Blacks Solicitors, 'Covering the Cost of Legal Action' available at https://www.lawblacks.com/2010/05/20/here-to-help-covering-the-cost-of-your-legal-action/, accessed 18 February 2026

recognised within the health sector, it is not administered uniformly across all health institutions in the country. In practice, it is largely dependent on the institutional culture of individual facilities. Public hospitals have some form of government-supported coverage, but many private hospitals and clinics operate without any structured indemnity protection. Research into Nigerian medical practice consistently shows that most practitioners either do not carry indemnity insurance or possess policies with very low coverage limits, leaving significant gaps when large claims arise.[87]

One of the major challenges stems from the regulatory framework. Ayenakin and others have noted that regulation of medical malpractice in Nigeria has not kept pace with the financial realities of modern medical practice and the growing frequency of malpractice complaints.[88] Hopefully, the Nigerian Insurance Industry Reform Act (NIIRA) 2025 which has now made professional indemnity for healthcare providers compulsory should alter this position in the coming years. In this way, the situation in Nigeria can reflect what has since been the case in other jurisdictions as professional indemnity insurance has become widely recognised as an essential pillar in medical malpractice litigation in other jurisdictions.

On the other hand, the situation is different in South Africa. Unlike Nigeria and the United Kingdom, South Africa has in recent years grappled with a significant rise in medical malpractice claims, a trend that has placed considerable strain on both the public health sector and the country's litigation system.[89] The growing number and value of claims have been described by policymakers as a "medical malpractice crisis," prompting a range of reform efforts aimed at easing the pressure on courts and ensuring that injured patients receive fair and timely compensation.[90]

One of the major reforms has been the promotion of mediation as a first step in resolving disputes.[91] This shift encourages parties to engage in dialogue before resorting to full litigation, reducing both costs and delays for claimants and healthcare providers. In addition to this, the government has explored alternative compensation models, including structured settlements and administrative schemes designed to provide compensation without the need to prove negligence.[92]

Another important development is the move toward strengthening state-backed insurance arrangements to help public hospitals manage the financial impact of malpractice claims.[93] These reforms are part of a broader effort to stabilise the system, protect healthcare budgets, and ensure that patient safety and accountability remain central within South Africa's evolving medico-legal landscape.

Nigeria can borrow a lead from these jurisdictions by initiating legal and policy reforms like those indicated below to address funding, insurance, and evidential challenges that constitute barriers to access to justice for medically injured patients.

6. Recommendation and Conclusion

6.1. Recommendations

The first proposal for reform is the amendment of the Legal Practitioners Act to allow for contingency fees and third-party funding. The long-standing prohibition on champerty and maintenance has restricted innovation in litigation funding. Amending the Act to permit regulated "no win, no fee" arrangements to attract third-party funding would significantly reduce

[87] Ezejiofor (n. 82)
[88] Ayenakin (n. 20)
Parliamentary Monitoring Group (PMG), 'Status of the medico-legal claims and service delivery implications (with Minister & Deputy Minister)' available in https://pmg.org.za/committee-meeting/39467/#:~:text=The%20AGSA%20indicated%20that%20the%20National%20Development%20Plan%20(NDP)%20intervention,paid%20were%20still%20high%20%E2%80%93%20R1, accessed 18 February 2026[89]
[90] ibid
[91] Mediation Academy, 'Summary of the October 2025 Updates to the Mandatory Mediation Directive' available athttps://www.mediationacademy.co.za/single-post/summary-of-the-october-2025-updates-to-the-mandatory-mediation-directive, accessed 18 February 2026
[92] Global Law Experts, 'Revolutionizing Justice: The Rise of Mandatory Mediation in South Africa' available at https://globallawexperts.com/revolutionizing-justice-the-rise-of-mandatory-mediation-in-south-africa/, accessed 18 February 2026.
[93] In a judgment delivered recently in February 11, 2026, the Supreme Court of Appeal has set aside an order of the Eastern Cape High Court which purported to abolish the common law once-and-for-all rule in a medical negligence claim involving a child who sustained spastic quadriplegic cerebral palsy as a result of negligent management of labour and delivery in a provincial hospital. In a unanimous decision, the Court held that the High Court's development of the common law was inappropriate because such structural reform of the law of damages should be undertaken by the legislature. See *T N Obo B N v Member of the Executive Council for Health of the Eastern Cape Government and Others* (Case No: 383/23) [2026] ZASCA 14 (11 February 2026).

upfront costs for victims. The Recent developments especially the President's transmission of a new Legal Practitioners Bill to the National Assembly signal an emerging recognition of these challenges. The Bill seeks to modernise the profession by reviewing advertising restrictions, reconsidering the prohibition on contingency fees, and opening the door for third-party funding. These initiatives, when properly implemented, could significantly reduce the financial barriers documented in this study. The proposed Legal Practitioners Bill already signals a move in this direction, and its passage should include clear rules on ethics, disclosure and fee regulation.

The second is the introduction of compulsory malpractice insurance for all health workers and facilities. Professional indemnity insurance should be made a mandatory requirement for both the licensing of health practitioners and the registration of healthcare facilities. This would ensure that hospitals and medical professionals have the financial capacity to satisfy judgments, settlements, or compensatory awards arising from medical negligence claims, thereby protecting patients and maintaining public trust in the health system. Efforts should be made to implement the recent Nigerian Insurance Industry Reform Act (NIIRA) 2025 which has now made professional indemnity for healthcare providers compulsory. Non-compliance should result in suspension of licenses, fines, or other administrative sanctions. To ensure affordability and sustainability, the government could explore pooled insurance schemes for smaller facilities and individual practitioners or provide regulatory incentives for insurance companies to offer standardised malpractice policies. Additionally, the system should include periodic audits to verify coverage and ensure claims are honoured promptly.

A third proposal for reform is the expansion of legal aid to cover medical negligence claims. The Legal Aid Act should be amended to explicitly include tort claims arising from medical injury. Alternatively, a specialised health-law legal aid unit could be established within the Legal Aid Council to provide dedicated support for victims of medical negligence. The mechanism for achieving this could involve earmarked government funding or a levy on healthcare institutions to finance the unit, ensuring sustainability. In practice, the legal aid provision would operate side by side with medical malpractice insurance. While insurance covers the potential financial liability of hospitals or practitioners, legal aid would provide victims with access to legal representation to pursue claims, negotiate settlements, or enforce judgments. This dual system balances the playing field, allowing victims to assert their rights without being deterred by the high cost of litigation, while insurance ensures that defendants can meet their financial obligations.

A fourth proposal is the institutionalization of court-accredited expert panels. Nigerian courts should have access to accredited panels of independent medical experts. These experts can be appointed by judges to reduce disputes between partisan experts, lower costs for litigants, and enhance the accuracy of medical assessments.

One mechanism to achieve this is the creation of a registry of court-accredited medical professionals, vetted by a regulatory body such as the Medical and Dental Council of Nigeria, from which judges can appoint experts as needed. Additionally, adopting the 'Single Joint Expert' (SJE) model, where one expert provides a single report jointly instructed by both parties, can streamline proceedings, reduce conflicting testimony, and ensure that the court receives an impartial, authoritative assessment.

A fifth proposal is the creation of a Medical Ombudsman and Mandatory Pre-Action Protocols. A medical ombudsman system would provide early intervention, resolve complaints, and reduce unnecessary litigation. Mandatory pre-action protocols, similar to those in the UK, would facilitate early disclosure of records, encourage settlements, and streamline the litigation process. In the UK, the protocol typically follows these steps: the claimant must send a letter of claim to the defendant outlining the nature of the complaint and supporting evidence; the defendant is then required to respond within a specified timeframe, providing relevant medical records and a summary of their position; both parties may engage in alternative dispute resolution such as negotiation or mediation; finally, if settlement is not reached, the claimant may commence formal court proceedings. Implementing such structured steps in Nigeria could promote transparency, reduce delays, and ensure that disputes are resolved efficiently before escalating to litigation.

In addition to the above, there is need to strengthen the enforcement of judgments. Procedural reforms should include simplified garnishee processes, stricter compliance obligations for hospitals, and the creation of enforcement monitoring units. For example, garnishee orders could allow direct deduction of awarded sums from hospital accounts or insurance providers, while enforcement monitoring units within the judiciary or regulatory bodies could track compliance, issue reminders, and report non-compliance to appropriate authorities. By establishing

these mechanisms, the effective execution of court judgments can be ensured, making litigation a meaningful remedy rather than a hollow formality.

6.2 Conclusion

Financing of medical malpractice litigation is one of the weakest aspects of Nigeria's justice and healthcare systems. While the substantive principles governing medical negligence are relatively clear, the practical environment for enforcing those rights is riddled with obstacles. For many victims, the cost of litigation alone is a barrier they cannot surmount. Where claims are initiated, they are often prolonged by procedural delays, evidentiary challenges and the absence of affordable expert testimony.

The inadequacy of litigation financing mechanisms whether through legal aid, contingency fees, third-party funding or statutory compensation schemes means that justice is more accessible to the affluent than to the average Nigerian patient. Even successful litigants may struggle to enforce monetary judgments, especially where healthcare providers lack indemnity insurance or operate with limited assets.
Unless Nigeria adopts a more modern, equitable and patient-centred framework for funding malpractice claims, medical negligence litigation will remain inaccessible to most victims. Emerging reform efforts, such as the proposed review of the Legal Practitioners Act and the recommendation for compulsory malpractice insurance, indicate a potential policy shift that aligns with some of the core findings of this study. However, meaningful change will require comprehensive reforms across legal, institutional and health-sector domains.

The proposed reforms in this paper with consistent with the conceptual foundations and challenges discussed. First, the emphasis on expanding access to legal representation through regulated contingency fee arrangements, legal aid inclusion, and third-party funding reflects the need to address identified barriers to access to justice. Similarly, the recommendation for compulsory professional indemnity insurance and the establishment of structured compensation mechanisms are designed to redistribute risk away from victims and toward institutional actors better positioned to bear it, thereby promoting fairness and equity. In the same vein, the conceptual analysis of compensation systems and litigation financing demonstrated that jurisdictions with diversified funding models experience greater access to justice and improved deterrence.

The need to address challenges to access to justice for victims of medical malpractice cannot be over emphasised. When the legal system is inaccessible to ordinary citizens, trust in healthcare institutions erodes, professional accountability weakens and the deterrent function of the law is lost.

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