[2015] JMSC Civ 126

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO 2009HCV02904

BETWEEN	**SHAWN DAVY**	**CLAIMANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**1ST DEFENDANT**
AND	**KINGSTON PUBLIC HOSPITAL (substituted by SOUTH EAST REGIONAL HEALTH AUTHORITY)**	**2ND DEFENDANT**

IN OPEN COURT

Mr. Kevin Page instructed by Page & Haisley, Attorneys-at-law for the Claimant

Mrs. Gail Mitchell instructed by the Director of State Proceedings for the Defendants.

Negligence – Professional Negligence – Claimant undergoing surgery after injury to left side of eye – subsequent illness of claimant - whether any nexus between surgery and subsequent illness – whether surgery negligently performed

Heard: April 13, 14 and 15, 2015 and June 26, 2015

LINDO J. (Ag.)

[1] This action is brought by Shawn Davy who was taken to the Kingston Public Hospital (KPH) on December 9, 2005 after having sustained a stab wound to his left eyebrow. At the time of the incident he was a student.

[2] The claimant bases his claim for damages for negligence by the defendants on the grounds that he underwent a left internal carotid artery ligation surgical procedure when the servants and/or agents of the 2nd defendant acting as servants or agents of the Crown so negligently performed their duties that they caused him to suffer serious

injury during the medical procedure. He claims that the defendants owed him a duty of care in relation to his treatment and operation performed on December 9, 2005.

[3] The particulars of negligence are stated as follows:

a) In all circumstances failing to provide a safe system for the provision of health care;
b) In all circumstances failing to provide a safe place for the provision of health care;
c) Failing to ensure that the claimant was properly prepared for the procedure;
d) Failing to ensure that no instrument or equipment was used in such a way to cause the injury
e) Failing to ensure that the claimant would in any way be affected in his other bodily processes

The particulars of injuries are stated as:

a) Deep laceration over eye brow;
b) Left rectobulbar hemorrhage with proptosis.

[4] Prior to the commencement of the trial of the matter, the court ordered that the 2nd defendant be substituted by The South East Regional Health Authority (SERHA) as the second defendant named was not a legal entity which could be sued.

[5] The 1st defendant admitted that the agents or servants of the substituted 2nd defendant, employed to the KPH, owed a duty of care to the claimant, that SERHA owed a non-delegable duty of care to ensure that reasonable care was at all material times taken in relation to the medical, nursing and other care with which the claimant was provided. It stated that it satisfied that duty to the claimant by treating him with reasonable care and that the care with which the claimant was provided was in accordance with a practice accepted as proper by a responsible body of medical persons skilled in that particular art. The defendants deny negligence and state that the claimant underwent a left internal carotid ligation on September 28, 2006 and there were no complications associated with the procedure.

[6] The issues to be determined by the court are:

i) Whether there was a breach of duty on the part of the defendants.

ii) Whether there is a causal link between the defendants' surgery on the claimant and the claimant's subsequent illness.

[7] The following were agreed and tendered in evidence:

i) Medical report of Dr Andrew Bogle dated April 4, 2007
ii) Medical report of Dr. Carl Bruce dated March 1, 2011
iii) Receipt dated April 27, 2011 in the sum of $20,000.00
iv) X-Ray Diagnostic & Ultrasound Consultants Ltd. report dated March 28, 2006
v) Medical Report of Dr Cheeks dated March 31, 2012 and
vi) Medical Report of Dr Webster dated July 27, 2009

The Claimant's Case

[8] The evidence of the claimant is that on December 9, 2005 he sought treatment at the KPH for an injury to his left eye and was admitted, did a number of tests and was reviewed by specialists on several occasions and advised that he needed corrective surgery "in the form of a procedure known as internal carotid ligation". He indicates that he did the surgery on May 1, 2006 and on the day following he had bloody stools and was also vomiting blood and was given medication and stayed in hospital for a further two months with the same symptoms.

[9] He states that he became physically weak, developed a limp and further tests revealed "a left carotico-cavenous fistula" for which he was recommended to do surgery which he opted to do. He also states that he did physical therapy and following the surgeries he was unable to walk, his left eye is "sightless, constantly swollen with mucus …" and his condition worsened after the surgeries were performed by the servants or agents of the defendants and as a consequence of the incident he suffered personal injuries and incurred expenses.

[10] Mr. Davy also states that complications of the surgeries affected his "personal and professional functions given that … had difficulty in doing my normal daily chores and …unable to seek employment".

[11] Under cross examination by Mrs. Mitchell, Mr. Davy stated that when he was taken to KPH the wound was dressed by a nurse, he was admitted for two weeks during which time his eye was swollen and "something like a patch" was placed over it, he was seen by the "eye doctor" and was doing fine "but just not seeing through my left eye".

[12] He further stated that a doctor explained about the injury to him and his mother although he was not sure which doctor, and noted that Dr Webster, the first doctor who attended to him and who he saw a lot while he was at KPH, ordered various tests to be done before the surgery on May 1.

[13] He also indicated that he was seen by Dr Wright, Dr Brown and Dr Webster, that Dr Wright explained that he needed surgery "to make the swelling go down", and Dr Brown told him after the surgery that he would be alright.

[14] In relation to his evidence that he was reviewed by specialists on several occasions, Mr. Davy stated that the doctors explained why they had to do the surgery and he agreed that at every stage, doctors attending to him explained why he needed surgery and what they were going to do. He also agreed that the doctors explained why he was vomiting blood and stated that they also told him why he became physically weak and developed a limp. He could not recall which doctor told him about "left internal carotid ligation" but stated that he was told the risks associated with the surgery, that "maybe I cannot move the right side again…" He was also unable to say if he did the "left internal carotid ligation" surgery but in answer to Counsel he said he "did a second surgery to correct what happen to the first one"

[15] In further cross examination, Mr. Davy stated that the doctors spoke to him and his mother in relation to the surgery in August 2006 and they both agreed for him to do that surgery. He admitted to being given physical therapy "fe gain back my strength to get ability fe walk back".

[16] He also indicated that his mother incurred expenses for transportation and for medical reports and agreed that $20,000.00 does not represent transportation expense.

[17] He disagreed with counsel's suggestion that the doctors took good care of him while he was at the hospital and in relation to his statement that the defendants failed to provide a safe system of health care, the claimant stated that this is "like when I wanted back my file, x-ray, CT scan to show a next doctor, I couldn't get that from KPH". He admitted however, that he did not do CT scan at KPH. When asked what he meant by the defendants failing in their preparation for procedure, he indicated that they operated but it wasn't successful and they "never too prepare". He disagreed that he had no complications from the two surgeries.

[18] In re-examination, the claimant stated that while he was at KPH for the two weeks he was walking normally but was "just not seeing through the left eye…" He did not remember what the doctors said caused the vomiting of blood and stated that he did not "quite know" the name of the second surgery that he did.

<u>The Defendant's Case</u>

[19] Dr. Dwight Webster, consultant neurosurgeon, gave evidence that the claimant was initially managed by the Ophthalmology service at KPH. He states that they noted a bruit in the left peri-orbital area and a brain scan done on February 11, 2006 was suggestive of a carotid-cavernous fistula and that on May 1, 2006 the Ear Nose and Throat, Head and Neck (ENT) service "explored the left orbital area". He further states that on May 16, 2006 the claimant reported right sided weakness and vomiting, he was reviewed on May 17 by the neurosurgical service and a decision made to prepare him for possible left internal carotid ligation.

[20] He indicates that the risk of stroke with complete right sided paralysis was discussed, surgery was arranged on June 15, 2006 and on that day clinical examination revealed improved limb power and after discussion with the ENT team, the claimant and his mother, a decision was made to cancel the procedure. He states further that the claimant was reviewed on July 10, 2006, was assessed as clinically better and further observation was recommended.

[21] Dr Webster further states that over the ensuing weeks there was again deterioration in the claimant's limb power which was thought to be changes in the pathology of the carotico-cavernous fistula and a decision was made to ligate the left internal carotid artery which was done jointly by the ENT and the Neurosurgical service on September 28, 2006. He notes that this procedure was not associated with any complications and since the procedure there has been slow but progressive improvement in Mr. Davy's clinical state.

[22] Under cross examination, he stated that he was not the first doctor who saw the claimant and that the claimant was referred on February 14, 2006 and he had a bulging of the left eye, (chemosis), no light perception from the left eye, was alert and was able to walk. He explained that a 'bruit' was a wave-like sensation, like a loud murmur.

[23] When asked why the referral to a neurosurgeon was not done earlier, he indicated that the ophthalmology service was able to obtain a CT scan February 11, 2006 which projected a neurosurgical problem, and it was after that the patient was referred. He admitted that it was challenging to get investigations so he did not know if there was a problem getting that CT scan earlier. He stated that based on the clinical findings the initial investigation would be a CT scan of the brain.

[24] When asked if a CT scan on Feb 11, 2006 is reasonable in circumstances where the claimant had the injury on December 9, 2005, he expressed doubt as to whether the clinical features then could have been different. It explained that it could be less obvious as fistula can get worse without any further injury or can improve and close without any sort of intervention. He added that if at the time of injury to the eye there is a bruit there "then I would progress to order a CT scan".

[25] Dr. Webster indicated that angiography was ordered, and it was not available at the KPH then as the machine was not working. In such a situation he indicated that the patient is given the information and the option to either finance it privately or if they can't, "administration would be informed and asked to assist". He stated that the test was done in late March at X-Ray & Diagnostic Ultrasound Consultants Ltd. at 1 Ripon Road, and the finding was that there was fistula.

[26] In further answer to Counsel for the claimant, Dr Webster stated that fistula are most commonly a result of injury but could also be caused by surgery for a patient in renal failure. He added however, that he has never seen a fistula caused by error during surgery as “you would have to be operating on vessels which are very close.”

[27] In relation to the surgical procedure done on May 1, 2006, he indicated that this was done by the consultant in charge, Dr. E. Brown and that the claimant had full range of movement in his limbs.

[28] He explained that a left internal carotid ligation was the “tying off of the left internal carotid artery as it traverses the neck” and that it had to be done as there was concern that there was another fistula involving the carotid artery and the cavernous sinus which was different from the fistula Dr. Brown dealt with and that the angiogram did not reveal this second fistula. He also explained that the effects of a fistula can cause weakness and vomiting.

[29] In response to a suggestion by counsel for the claimant that the hospital failed to provide the requisite standard of care in relation to the injuries suffered by the claimant, Dr. Webster reply was “…the institution did its best outside of having all investigating tools at all times…”

[30] Dr. Ediel Brown gave evidence that on December 9, 2005 the claimant was admitted to the ophthalmology service and found to have left mechanical ptosis, a proptosed (protruding) globe with no eye movement and a dilated non-reactive pupil and was diagnosed as having post traumatic retro-orbital haematoma, traumatic optic neuropathy and oculomotor neuropathy. Investigations done on February 11, 2006 reported findings consistent with left carotid-cavernous fistula and he was admitted to the Neurosurgical Unit on February 14, 2006.

[31] He states that the claimant was referred to the ENT clinic on March 30, 2006 with a diagnosis of (A-V) fistula between the left facial artery and ophthalmic vein and on examination was found to have “ left severe proptosis, a pulsatile supraorbital mass with thrills and bruit and an ophthalmoplegic dead eye, secondary to ‘Traumatic orbital Apex

Syndrome' with multiple neuropathies involving the following cranial nerves: ii-optic, iii-oculomotor, iv-trochlear and vi-Abducens…"

[32] Dr. Brown indicates that there were discussions with the claimant and his mother after which the claimant had "left orbital exploration with ligation of the facial artery and ophthalmic vein close to the orbital apex" and orbital decompression surgery to assist the proptosis.

[33] When asked whether given the nature of the claimant's injuries a CT scan should have been done shortly after admission, Dr Brown stated that it depended on the presumptive diagnosis and if the ophthalmologist did not consider it, then it would not have been requested.

[34] In response to suggestions by Counsel for the claimant that negligent treatment of Mr. Davy by the hospital caused him not to be able to walk on his own and that the risk of conducting the first surgery outweighed the benefits, Dr. Brown strongly disagreed. He explained that the treatment at KPH is a variety of things and that what the surgery did was to remove the mass from his forehead and the risk of rupture.

[35] Dr Randolph Cheeks, Senior Consultant Neurosurgeon, provided an expert report at the instance of the defendants. This he said prepared after reference to a number of documents provided to him and an examination of the claimant on March 19, 2012. The documents provided were photocopy of the entire KPH medical records of the claimant numbering 151 pages, medical report dated March 1, 2011 prepared by Dr C. Bruce, copy of claim form and particulars of claim and medical report dated July 27, 2009 prepared by Dr.D. Webster.

[36] He states that he saw the claimant for neurological assessment on March 19, 2012 "approximately 6 years and 3 months following the initial stab wound, and 5 ½ years following the operation of left carotid artery ligation " and that a "complete general and neurological examination was carried out". He notes that this neurological examination "reveals complete irreversible loss of visual function in the left eye which is displaced forward in the orbit (eye socket), and pyramidal weakness of his right…"

[37] Dr. Cheeks further states that he requested an updated MRI scan of the brain which was carried out on March 27, 2012 and that he examined the images and they confirm the "persisting presence of a left carotid-cavernous fistula. There is no evidence of infarction (death of brain tissue) of the left hemisphere of the brain".

[38] Additionally, he notes that the current neurological condition of blindness in his left eye is entirely consistent with the penetrating head injury which he sustained on December 9, 2005 and his conclusion is as follows: *"… that the weakness of his right extremities pre-dated the operation carried out by Dr. Webster and was caused by the traumatic carotid-cavernous fistula which was a consequence of the penetrating injury to his head which he sustained on December 9, 2005. The trajectory of the stab wound was such that it entered the forehead, directly penetrated the roof of the orbit (eye socket) destroyed the optic nerve at the apex of the orbit and entered the retro-orbital space injuring the carotid artery which is situated at this location in close anatomic relationship to the cavernous sinus."*

[39] In cross examination by Mr. Page, Dr Cheeks emphasized that the purpose of his expert opinion was to make an assessment of the neurological status of the claimant in relation to the surgical procedures of ligation of the left internal carotid artery. He indicated that his assessment took into account all the events commencing with the stab injury the claimant received and stated that he was provided with the entire medical docket of the claimant.

[40] He indicated that based on the documented medical information when the claimant presented to the KPH, he was not of the opinion that the claimant should have been referred to a neurosurgeon on admission or that a CT scan should have been done as "there was no immediate medical justification for that…".

[41] When asked if he would agree that the claimant developed difficulty walking after the surgery of May 1, 2006 he disagreed, noting that the first report of weakness of his right extremities was 15 days later when he was seen because of vomiting and that an emergency CT scan done at the University Hospital revealed that the carotid-cavernous fistula which was first diagnosed in February was getting larger and damaging

previously undamaged parts of the brain. He further noted that the claimant continued to experience weakness of his right leg which had been present since May 2006.

[42] Dr. Cheeks explained that the purpose of the carotid ligation procedure is to try to eliminate or reduce the flow of high pressure arterial blood through the fistula as continued high pressure blood flowing directly into the veins cause them to expand, "compress and damage the brain and push the eyeball out of its socket. In many cases, if untreated, the pressure on the brain and the eyeball result in death". He also indicated that the claimant has a smaller left carotid cavernous fistula than had been illustrated prior to the internal carotid ligation and agreed that the operation of September 28, 2006 was not successful in the sense that it did not manage to restore anatomic normality.

[43] In response to suggestions by counsel for the claimant that it was the two operations conducted on Mr. Davy which resulted in him not being able to walk and that the doctors at KPH acted in a negligent manner in their treatment of Mr. Davy, he emphatically denied.

[44] In re-examination, Dr Cheeks explained that he would not wish to mislead the court into belief that the surgery of May 1, 2006 caused the weakness of May 16 because "this is vascular surgery and when vascular surgery causes a neurological complication that complication is immediate". He opined that the reason the claimant cannot walk properly is because the injury to his head damaged a very important structure of the base of the skull resulting in the formation of carotid cavernous fistula which diverted blood intended for the left hemisphere of the brain into the cavernous sinus causing a shortfall in the delivery of blood to the left side of the brain and an increasingly large swelling of the cavernous sinus resulting in brain compression.

<u>The Submissions on behalf of the Claimant</u>

[45] Mr. Page on behalf of the claimant submitted that the doctors at the KPH owed the claimant an established duty and standard of care which consisted of using reasonable skill and care when treating him. He indicated that the duty extends to the

nature of post operative care and that the doctors did not act in accordance with the practice of a competent body of such professionals in failing to have the claimant do a CT scan in a timely manner when he was first admitted, given the nature of his injuries. He noted also that the claimant was not referred to a neurosurgeon until about two months after he was first admitted to the hospital.

[46] He opined that the evidence illustrates the lack of alacrity by the said doctors as the claimant was only referred to do CT scan "which would reveal the presence of the fistula on the 11th day of February, 2006". He notes further that the reasons given by Doctors Webster and Brown was that there was no equipment to do a CT scan at the hospital at the time and submitted that this shows negligence on the part of the defendant who had a duty to ensure that relevant machines and equipment were available to patients being admitted to the hospital.

[47] Counsel expressed the view that the defendants failed to act promptly and competently with due care and diligence in the necessary treatment, given the subsequent complications and deteriorating health of the claimant as a result of the procedures in May and September 2006. He indicated that the breach was the failure of the defendants to treat the claimant's complications with the ordinary care and skill of individuals of the medical profession and as a result of that breach the claimant suffered injuries which were complications such as right sided weakness, vomiting and blood in stool which were caused directly from both procedures and the treatment thereafter and that the damage sustained was not too remote.

[48] Counsel referred to the case of **Howard Genas v The Attorney General of Jamaica** CL 1996 G 105, unreported, delivered October 6, 2006, where Anderson J citing the case of **Bolam v Friern Hospital Management Committee** [1957]1 WLR 583, 587 and noting that the "Bolam " test had been accepted by courts in the region, paraphrased the test for the standard of care thus:

> *"the test is the standard of care of the ordinary skilled man in exercising and professing to have that special skill at the risk of being found negligent. It is well established that it is sufficient if he exercises the*

> *ordinary care and skill of a reasonable man exercising that competent art…is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art…putting it the other way round, a man is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion who would take a contrary view"*

[49] Mr. Page also cited the case of **Margarette Macaulay (Administratrix of est Berthan Macaulay, dec'd) v The Attorney General of Jamaica and the South East Regional health Authority,** CL 2002M 273 , unreported, delivered where Straw J, emphasized the importance of causation and noted that (in that case)it would have to be assessed whether the breach was the proximate cause of the injury and whether the injury sustained was attributable to the want of reasonable care and skill in the claimant's treatment.

[50] Counsel for the claimant did not make mention of the evidence of the expert witness Dr Randolph Cheeks.

<u>Submissions on behalf of the defendants</u>

[51] Mrs. Mitchell referred to inter alia, dicta in the case of **Bolam v Friern** , (supra) in considering the test to be used in determining the duty of care owed to patients. She also noted that the test was articulated by Lord Scarman in **Maynard v West Midlands Regional Health Authority** [1984] 1WLR 634.

[52] Counsel also cited the case of **Bolitho v City & Hackney Health Authority** [1997] 4 All ER 771 as having raised the requirement for a doctor to show not just that the treatment administered accorded with proper medical practice, but also that it was demonstrably reasonable and logical in the particular circumstances. She quoted the headnote which reads:

> *"a doctor could be liable for negligence in respect of diagnosis and treatment despite a body of professional opinion sanctioning his conduct where it had not been demonstrated to the judge's satisfaction that the*

> *body of opinion relied on was reasonable or responsible. In the vast majority of cases the fact that distinguished experts in the field were of a particular opinion would demonstrate the reasonableness of that opinion. However, in a rare case, if it could be demonstrated that the professional opinion was not capable of withstanding logical analysis, the judge would be entitled to hold that the body of opinion was not reasonable or responsible."*

[53] She submitted that in this case, Drs. Brown and Webster "acted in accordance with a practice that is accepted as proper by a responsible body of medical men skilled in a particular art…". She added that both doctors "as practitioners", according to the learned authors of Halsbury's Laws of England, "brought to their respective tasks a reasonable degree of care" in respect of the claimant during the course of 2006.

[54] She indicated that the claimant has not provided any evidence to refute the testimony of the doctors and noted that the evidence of Drs. Bogle and Bruce serve to substantiate and corroborate the evidence of Drs. Webster and Brown and that the evidence of Dr. Cheeks speaks volumes in respect of the diagnosis and treatment of Mr. Davy which exonerates the two doctors whose care of Mr. Davy is being probed.

[55] Counsel therefore concluded that the claim for medical negligence and the allegations of failure on the part of the 2nd defendant to provide a safe system of health care must fail. She noted also that the failure to get an angiogram as at February 11, 2006 because the machine was not working is "hardly a failure to provide a safe system of health care in the face of the efforts to assist him and his family with finances to get the angiogram done privately".

[56] In order for the claimant to succeed on this claim, he has a duty to establish on a balance of probabilities that the defendants owed him a duty of care, the defendants' negligence/breach of duty caused him to suffer the injuries as pleaded and that the damage suffered is not too remote.

[57] It therefore falls to be determined whether the staff of KPH and Drs. Brown and Webster were negligent in relation to their diagnosis and treatment of the claimant.

[58] It is established that a hospital has a primary non-delegable duty of care which can be vicarious and direct. Lord Denning LJ in **Cassidy v The Ministry of Health** [1951] 2 KB 343 expressed the view that:

> *"I take it to be clear law as well as good sense that where a person is himself under a duty to use care, he cannot get rid of his responsibility by delegating the performance of it to someone else, no matter whether the delegation be to a servant under a contract of services or to an independent contractor under a contract for services".*

[59] It is admitted that the KPH and staff which includes Drs. Webster and Brown, owed a duty of care to the claimant who was first seen by Dr. Brown on February 14, 2006 and by Dr. Webster on March 30, 2006. Prior to this, he was treated by the nursing staff on duty at the time he presented to the hospital and it is his evidence that he was taken to a Health Centre before being taken to the hospital.

[60] It is not disputed that he sustained a penetrating head injury in the region of his left eye and was taken to the KPH on December 9, 2005 where he was admitted and treated and that he underwent two surgeries, the first on May 1, 2006 and the second on September 28, 2006. He is blaming the surgery of May 1, 2006 for the weakness to his right side and his inability to walk unaided.

[61] The doctors were united in their view that the claimant was able to walk immediately after surgery. They were also of one accord that there were discussions with the claimant and his mother in relation to surgical procedures to be carried out and the likely effects. This was confirmed by the claimant.

[62] The medical report of Dr. Carl Bruce dated March 1, 2011, indicates that "when seen in November 2010, Mr. Davy reported getting back some strength in the right side of his body after the carotid ligation". Dr Bruce was not available for cross examination.

[63] Dr Cheeks' evidence in relation to the purpose of the left internal carotid procedure corroborated the evidence of Drs. Webster and Brown, and as regards the

acceptable practice in relation to the use of angiograms to determine if surgery should be performed, he corroborated the evidence of Dr Webster.

[64] Drs. Webster and Brown agreed that angiography was not available at the KPH at the time just before the first surgery was contemplated but it is noted that in the absence of the equipment, arrangements are made to have the investigations carried out privately. Although Mr. Page placed emphasis on the lack of equipment as pointing to negligence, I do not find that to be so. I am satisfied based on the evidence of Dr. Webster, who, although admitting that it was challenging to get investigations, was not aware of any challenges to get it earlier, and Dr. Brown who was unable to state why it was not done earlier but indicated that funding was sought from SERHA.

[65] I therefore accept the consensus that the doctors, having generally acted in accordance with the required practice, cannot prima facie, be regarded as having been negligent. I do not find that lack of equipment at the KPH was the cause of the claimant's illness as I also accept the expert opinion of Dr. Cheeks that based on the injury and the documented medical information, there was no immediate medical justification for a CT scan. Additionally, he was not of the view that the claimant should have been referred to a neurosurgeon on admission.

[66] I accept the expert evidence of Dr. Cheeks that the injury to the claimant's head damaged a very important structure of the base of the skull resulting in the formation of a fistula. He explained that this diverted blood intended for the left hemisphere of the brain into the cavernous sinus causing a shortfall in the delivery of blood to the left side of the brain and an increasingly large swelling of the cavernous sinus resulting in brain compression which is the reason the claimant has difficulty walking and has weakness of his right arm.

[67] I cannot agree with the opinion of counsel for the claimant that if a CT scan was done earlier it "would reveal the presence of the fistula on the 11th day of February, 2006" and that there was a failure to act with alacrity which was the cause of injury to the claimant as no evidence has been placed before me to suggest that.

[68] The injuries of the claimant were particularized as: "deep laceration over eyebrow and left retrobulbar hemorrhage with proptosis". These injuries predated his presentation to the KPH and therefore cannot be said to be causally connected to any defendants. The claimant has failed to establish a nexus between the surgeries and the subsequent loss of function in his lower limbs and has failed to show that the servants of the Crown were negligent and that his illness resulted from such negligence. On the evidence produced before me no such finding can be made.

[69] I find that the doctors acted in accordance with the practice which is accepted as proper by a responsible body of medical men skilled in the particular art and I have placed reliance on the expert evidence of Dr. Cheeks whose professional opinion I find capable of withstanding logical analysis.

[70] I have therefore concluded that there was no breach of duty by the defendants and having considered all the evidence, I am of the view that the claimant has failed to prove on a balance of probabilities that the defendants have breached their duty of care and that such breach caused the injuries complained of.

[71] There shall therefore be judgment for the defendants against the claimant with costs to be taxed if not agreed.