



[2026] JMSC Civ. 67

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018 HCV 02134

BETWEEN	WINSTON ROBINSON	CLAIMANT
AND	THE UNIVERSITY HOSPITAL BOARD OF MANAGEMENT	DEFENDANT

IN OPEN COURT

Mrs. Vanessa Wallace Jackson instructed by JNW Taylor and Associates for the Claimant.

Mr. Matthew Royal and Miss Meghan Falconer instructed by Myers, Fletcher and Gordon Attorneys-at-Law for the Defendant.

Heard: April 21, 2026 and June 1, 2026

Medical Negligence – Expert reports – Whether the Claimant has established breach of the duty of care.

CARR, J

The Claim

[1] The Claimant filed a claim against the Defendant seeking damages for losses arising from injuries sustained in or about June 2013, and/or November 2013, and/or March 2015 arising from the purported negligence of the Defendant's agents or servants or employees in the conduct of surgical operations.

[2] The particulars of claim referred solely to a prostatectomy which was done by the Defendant in June 2013. It was averred that the Defendant negligently or

recklessly caused rectal injury to the Claimant which persisted with urinal leakage from the anus, pneumaturia and faecaluria. The Claimant relied on the doctrine of *res ipsa loquitur* and stated that he did not leak urine from the anus prior to the surgery.

Background

- [3] The Claimant did not file any witness statements, and he died before the trial. His widow Mrs. Andrea Witter Robinson was appointed as administrator ad litem on behalf of his estate. By agreement the expert reports of Dr. Robert Wan (filed January 11, 2024) and Dr. Doreen Williams-Byfield (filed March 18, 2026) were admitted into evidence and that was the case for the Claimant.
- [4] The sole witness for the Defendant was Dr. William Aiken. His witness statement stood as his evidence in chief and he was cross-examined.

Discussion

- [5] A claim of medical negligence is established if the Claimant can prove the following:
- a. That he was owed a duty of care by the medical staff performing the surgery.
 - b. That the medical staff breached that duty, and
 - c. That because of that breach he has suffered injury or loss.
- [6] There is no dispute as to the fact that once a patient is admitted at a hospital, they are owed a duty of care by the medical staff¹.
- [7] Dr. Aiken in his evidence admitted that the Claimant was a patient at the University Hospital of the West Indies. It is also accepted that the doctors at that Hospital

¹ Cassidy v. Ministry of Health [1951] 2 KB 343

performed the surgery that resulted in an inadvertent injury to the Claimant's rectum.

- [8] What is in contention between the parties is whether that duty was breached. The standard of care applicable in medical negligence cases was established in **Bolam v Friern Hospital Management Committee**², where McNair J. formulated what has become known as the *Bolam* test: that is, the standard of the ordinary skilled person exercising and professing to have the special skill in question.
- [9] In that case, the plaintiff sustained a fractured hip during electro-convulsive therapy and alleged that the defendant hospital was negligent in failing to warn him of the risk of fracture, failing to administer relaxant drugs to minimise that risk, and failing to apply adequate manual restraint during the procedure. The court found in favour of the defendant, holding that none of the conduct complained of fell below the accepted standard of care. The evidence disclosed two recognised schools of medical thought on each issue raised, and the hospital's practice fell within one of them.
- [10] In applying the Bolam test to cases such as this the Claimant is required to establish through the provision of medical evidence that the Defendant's care was not in accordance with the ordinary skill exercised by those holding themselves out to have that special skill. In other words, the Claimant must provide evidence as to the standard of care that accompanies the type of procedure that was conducted as well as evidence to support the fact that the appropriate standard was not met.
- [11] Counsel for the Defendant has submitted that there is no evidence of a breach of duty on the part of the Defendant as the medical evidence that was agreed does not support such a conclusion. I must agree with his submissions.
- [12] The evidence outlined by Dr. Wan in his report is as follows:

² [1957] 2 All ER 118

- a. *The patient had clinical significant cancer and treatment options presented to him were appropriate and in keeping with current standards.*
- b. *The decision was to choose surgery was also in keeping with current standards.*
- c. *Rectal injury during Radical Retropubic Prostatectomy is a well known but rare complication. The incidence is generally felt to be less than 0.3%...It has been reported to be as low as 0.12%...But has been reported as high as 1.25%.*
- d. *It is most likely to occur when developing a plane between Denonvillier's fascia and the rectum occurred in this case.*
- e. *In 16 cases where the injury was recognised and repaired intra operatively, 2 developed a recto urethral fistula.*
- f. *The operative notes indicate adherence to the well accepted technique of Radical Retropubic Prostatectomy as outlined by Patrick Walsh (Campbell's Urology 8th edition, (DVD -Radical Retropubic Prostatectomy – a detailed description of the surgical technique 2003) and Shaeffer et al (Campbell's Urology 11th edition).*
- g. *In this case, the injury was identified during the procedure, advice from the General Surgery team was sought and the Urology team performing the procedure proceeded to repair the rectal injury as discussed with the General Surgeons.*

[13] He concluded that *“The procedure of Radical Retropubic Prostatectomy was carried out in accordance with good and approved medical, Urology and Surgical practice in Jamaica in 2013 and 2015. Because I did not observe the procedure in this particular case, I am unable to say whether or not the surgical team neglected to take appropriate care to prevent the complication of Recto-Vesical fistula nor am I able to comment on the degree of difficulty which may have been encountered during the procedure.”*

[14] The report of Dr. Williams-Byfield indicated at the penultimate paragraph:

In summary, Mr. Robinson had RRP and bilateral lymph node dissection for adenocarcinoma of his prostate complicated by rectal injury resulting in a rectovesical fistula. Several surgical procedures over a three-year period resulted

in resolution. This unfortunate misadventure would have resulted in suffering and hardship for Mr. Robinson. His medical team were prompt in the recognition and treatment of his issues. From the information I have, I am unable to comment on whether the best expertise available at the time was utilized as this would have had an impact on the outcome.

[15] In summary the medical evidence presented to the court on behalf of the Claimant suggests that the surgical procedure was carried out in accordance with good and approved medical standards and the medical team was prompt in the recognition and treatment of the Claimant's injuries.

[16] The Claimant has therefore failed to establish that the injury received during the medical procedure conducted in June 2013 was due to the negligence of the Defendant.

Orders:

1. Judgment for the Defendant.
2. Costs to the Defendant to be agreed or taxed.