Judgment Cabinet

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.W. 265 /1992

BETWEEN	STEPHEN WILSON (By next friend and Guardian Dahlia Wilson)	CLAIMANT
AND	MEDICAL ASSOCIATES LTD	1ST DEFENDANT
AND	DR. BRENDAN DUNN	2ND DEFENDANT

Mr. Leon Palmer and Mr. Ronald Mason for the Claimant.

Mr. Jermaine Spence and Mr. Courtney Bailey, instructed by Dunn Cox and Orrett for the First Defendant.

Mr. Crafton Miller and Miss Stephanie Orr, instructed by Crafton Miller and Company for the Second Defendant.

Medical Negligence - Application of the doctrine of RES IPSA LOQUITOR

HEARD: 5th May, 2006, 10th May, 2006

18th June, 2009

R. KING, J.

This is a most tragic case. The claimant, Stephen Wilson, then five years old, underwent surgery at the Medical Associates Hospital which was operated

by the first Defendant. The second Defendant, Dr. Brendan Dunn, was the anaesthetist in attendance at the surgery.

On completion of the surgical operation which was a circumcision, the claimant went into cardiac arrest resulting in severe brain damage.

At the date of the trial Stephen was twenty-four years old and there has been no significant improvement in his condition since the incident. He is mentally retarded, is unable to walk or use his arms, has no control over his bowel actions and can speak no more than two or three words.

This action was brought by the Claimant through his mother Dahlia Wilson as his guardian and next friend claiming damages for:

(i) breach of an implied warranty that the application of the general and local anaesthetics were safe and harmless to him, or alternatively;

(ii) for negligence for a breach of a duty owed to him to ensure that the application of the said anaesthetics was safe and harmless.

The claim against the First Defendant is by way of vicarious liability based on the assertion that the Second Defendant acted as the servant and/or agent of the First Defendant. This assertion is denied by the First Defendant, who says that the Second Defendant was an independent contractor whose service was employed either by the Claimant's guardian, or by the surgeon who performed the operation, who was himself ~~not a~~ servant or agent of the ~~First Defendant~~, but also an independent contractor employed by the claimant's guardian.

The claimed liability of the Second Defendant is based on his having administered the general anaesthetic before and during the operation, and on his

having, on the completion of the surgery, allegedly injected into the Claimant's penis a local anaesthetic in the form of Lignocaine, whereupon the Claimant suffered cardiac arrest.

The second defendant admits having administered the general anaesthetic, which he says was safe, harmless, and effective and administered without any negligence. He denies that the local anaesthetic, Lignocaine, was administered by him, or on his direction, or as a result of his decision. He insists that the decision to administer the Lignocaine was that of the surgeon Dr. John Martin, since deceased, and that it was Dr. Martin who injected the Lignocaine into the Claimant's penis, while he, Dr. Dunn, was occupied with monitoring the pulse and vital signs of the Claimant, and holding in place the face mask through which the gases for the general anaesthetic were being administered.

Although the Claimant makes very specific allegations in his pleadings as to the acts and omissions of which he says the defendants are guilty, and which he asserts caused the claimant's injuries, he depends for proof both of these acts and omissions and of his assertion as to their effect only on the maxim of RES IPSA LOQUITOR.

His only witness, Mrs. Dahlia Wilson was not present during the operation and no expert evidence was adduced on behalf of the claimant.

To what extent, if at all, then is the maxim of RES IPSA LOQUITOR applicable in this case?

The significance and proper application of RES ISPA LOQUITOR was thoroughly examined by Hobhouse LJ in JOHN RATCLIFFE V. PLYMOUTH

AND TORBAY HEALTH AUTHORITY AND ANOTHER (1988) EWCA civ 206, February 11, 1988.

At page 16 of his judgment he explained:

"the essential role of the doctrine of RES IPSA LOQUITOR is to enable the plaintiff who is not in possession of all the material facts to be able to plead an allegation of negligence in an acceptable form and to force the defendant to respond to it at the peril of having a finding of negligence made against the defendant if the defendant does not make adequate response. But once the defendant has responded then the question for the court is whether, in light of that response, that is to say upon all the evidence that has been placed before it at the trial both by the plaintiff and the defendant, the court is satisfied that the defendant has been negligent and that his negligence caused the plaintiff's injury.

The defendant can displace the inference by reference to a closer examination of the plaintiff's evidence or by reference to evidence adduced by the defendant that the inference on a balance of probabilities there was negligence is not justified. The plaintiff's case then fails unless a more specific case has been made out.

Alternatively, the defendant can accept that there is a legitimate basis for the implication but say that in the particular case the defendant in fact exercised reasonable care notwithstanding the outcome and the inability fully to explain how the plaintiff's injury came about.

"...RES IPSA LOQUITOR is not a principle of law; it does not relate to or raise any presumption. It is merely a guide to help to identify when a prima facie case is being made out. Where expert and factual evidence has been called on both sides at the trial its usefulness will normally have long since been exhausted".

I accept and adopt this as a correct exposition of the doctrine of RES IPSA LOQUITOR. I find that the injuries suffered by the claimant and the circumstances under which they occurred required an adequate response from the defendants if they were to avoid a finding against them on the claim in negligence.

Having carefully considered all the evidence in this case I find on a balance of probabilities that the cause of the claimant's injury was neither the general anaesthetic administered to him nor any negligence in the method of its administration. I find that on the evidence before me the most probable cause of the claimant's injury was the effect of the local anaesthetic, Lignocaine.

I accept the evidence of the second defendant, uncontroverted as it is by any other evidence in the case, that the drug Lignocaine was administered to the claimant by the surgeon, Dr. John Martin, whose decision to do so was his own, and who was not then acting under the supervision of the second defendant. I accept the evidence of the second defendant that it was within the competence of Dr. Martin, as operating surgeon, to decide on and administer the local anaesthetic as he did.

The evidence of Dr. Neville Ballin, the Consultant anaesthetist called by the first defendant, indicates that on his review of the records of this operation,

he found that after the claimant went into cardiac arrest "standard resuscitation measures were used". I accept this evidence.

Consequently there is no basis upon which I can find the second defendant liable for the injuries suffered by the claimant.

It is impossible for the court to determine on the evidence available to it whether the injury resulted from an allergic reaction to the Lignocaine or from an accidental injection of the drug into the superficial or deep dorsal vein of the penis.

Dr. John Martin was not made a party to this suit either before his death or through his estate subsequently, nor did the pleadings seek to affix the First Defendant with vicarious liability for any alleged act of negligence on the part of Dr. Martin. Indeed since the claimant was relying on his assertion that the second defendant administered the Lignocaine, he neither alleged any act of negligence against Dr. Martin nor ever asserted that Dr. Martin acted as agent of the First Defendant.

In the circumstances it is unnecessary for me to consider whether there was negligence on the part of Dr. Martin. The only source of vicarious liability of the First Defendant being the alleged agency of the Second Defendant whom I have found not to be liable, there is no basis to affix liability to the First Defendant either. Consequently on the claim of negligence, unfortunate though the claimant's plight is, there must be judgment against him in favour of both defendants.

On the findings of fact made and for reasons already explained the claim for breach of warranty must also fail against these two defendants, and in respect of that claim too there will be judgment for both defendants against the claimant.