

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

‘MANNYALLEN NTE Plaintiff

And

QUEEN ELIZABETH II HOSPITAL 1st Defendant

MINISTRY OF HEALTH 2nd Defendant

HE ATTORNEY GENERAL 3rd Defendant

JUDGEMENT

Coram : Hon. Mr. Justice T. E. Monapathi
Date of Hearing : 7th June, 1992
Date of Judgement : 17th December 2014

SUMMARY

ANNOTATIONS:

CITED CASES

STATUTES

BOOKS

[1] This is a case wherein the Plaintiff claims damages for loss of her daughter, who died at Queen II Hospital while giving birth. She also claims in her representative capacity on behalf of the minor child for loss of support for the minor child and also for the fact that the minor child has also suffered

damages personally for being a disabled child as a result of the negligent handling of the deceased in giving birth. She claims in total M1,500,000.00.

[2] On the 31st July 2008, the Deceased Matlotlo Nte, who is Plaintiff's daughter, was attended to at St. Joseph Hospital upon her complaints of dizziness, blurred vision and headaches. She was diagnosed with pre-eclampsia and was hospitalised. She was thirty onine (39) weeks pregnant which means it was time for her to deliver. According to the evidence of PW1, they requested that she should be transferred to Queen Elizabeth II Hospital in Maseru as there was a shortage of doctors at St. Joseph's Hospital. The patient was transferred to Queen Elizabeth II Hospital. On arrival, she was admitted in the Labour Ward, she was with PW1 has to wait outside a bit waiting for tie for visitors. Whilst she was outside, she was called in as the Deceased had fallen from the bed. She also confirmed this fact with fact with the Deceased.

[3] PW1 also showed that she was prepared for Caesarean Section Operation in the evening because the baby was big. In the morning, she found that the Deceased had delivered the baby but she was unconscious until she shook her. Deceased did not realise that she had already delivered the baby as she was now semi-conscious. She found that the drip was completely empty and it was drawing blood and the catheter bag was overflowing. She went away and later at mid-day, she was called to hospital where she found her sister dead.

[4] Evidence by PW2, a very qualified and experienced nurse showed that pre-eclampsia is a condition akin to primagravida, i.e. first pregnancies and usually occurs on the 30th week of pregnancy. She says it is symptoms are headaches, dizziness, blurred vision, increased blood pressure, maybe also

protein in the urine and the patient may fit. Although on the 31st July 2008, the Deceased had low blood pressure, and did not seem to have protein in the urine according to the medical records, “exhibit A”, she however, had other symptoms and was diagnosed with pre-eclampsia. She explained that pre-eclampsia occurs when there is placental dysfunction.

[5] PW2 showed that the patient has to be hospitalised and put in a cot bed or bed protected on the sides to prevent a patient from falling from the bed. Patient needs to be under constant care. Evidence showed that because of the dizziness and propensity to fit, the patient is likely to fall if proper protective or preventive measures are not taken. Should the patient fall, or trauma be inflicted on the abdomen or the cord contract then the placenta may abrupt prematurely, that is, separate or tear asunder, causing more complications.

[6] According to exhibit “B”, the cause of death of the Deceased was disseminated intra-vascular coagulopathy. According to expert evidence, this is a serious haemorrhage caused by abruption of the placenta. The haemorrhage is concealed and may not be easily visible and in simple terms, it means that factors that make bleeding stop do not function.

[7] Abruption of the placenta, the evidence showed, is usually caused by the patient falling, a blow on the abdomen or contraction on the placenta. In the present case, there is evidence that the Deceased fell from the bed. This is the most possible cause of intra-vascular coagulopathy in the instant case. The patient seems to have been generally neglected and even after the Caesarean section operation she was still not given proper nursing care.

[8] Medical staff, i.e. doctors and nurses have professional duty to take care of patients and treat or nurse them professionally and with reasonable care and skill. The courts do not make findings in vacuo but on the basis of facts placed before it, the onus lies on the Plaintiff suing for damages to convince the court that there is negligence and that she suffered damages.

[9] In the present case, the expert evidence showed that precautionary measures should be taken to ensure that a patient who has been diagnosed with pre-eclampsia should not fall or have a blow on the abdomen because that may cause the placenta to rupture. There is always need to admit such patient in a cot bed or bed protected on the sides to prevent a patient falling. Falling may cause the placenta to rupture and the placenta rupturing pre-maturely may cause coagulopathy disorder as it happened in the present case. The evidence of PW1 shows that the Deceased fell from the bed. This would have probably caused the placenta to tear asunder prematurely and therefore cause blood coagulation disorder. According to W2, the said abruption would have resulted in concealed haemorrhage.

[10] The Defendants are vicariously liable for the actions of their employees. The employees of the First and Second Defendant have been negligent in that in their care, the patient fell from the bed. They therefore failed in their duty of care to ensure that a patient who had already been diagnosed with pre-eclampsia should not fall from the bed. The Defendants are liable for the actions of the nursing staff by virtue of the fact that they were employed by the First Defendant and the Second Defendant in order to do lawful activities. Therefore, if a servant or nurse in this instance does not proceed with the required or

expected measure of skill and care and cause harm to others, then the Master or Employer is liable.

[11] It is trite law that the employer is liable for delictual actions of employees committed within the scope of their employment. See *Mantusa Matekane vs Attorney General 1991-1992 LLR and LB 153 at 161-162*. In this case the government was held liable for actions of a police officer who shot a motor vehicle during the course of duty. As a result of his action, a driver was killed and a passenger suffered shock. The court there showed that the police officer had a duty of care in carrying his duties to ensure that he does not cause injury to others. Where one person has caused the death of another, different claim for damages may arise against the wrongdoer. Amongst these claims is a claim for loss of support or services. This claim arises by reason of the fact that the Deceased had a legal duty to provide such support.

[12] For a claim of loss of support to succeed, the Deceased must have been under a legal duty to support the Plaintiff or claimants. Such persons would be the children of the Deceased, the parents of the Deceased provided they are indigent and the siblings of the Deceased provided they are indigent or the child contributed towards the parent's maintenance. Authorities show that it was not necessary to show that the time of the death of the Deceased was, providing maintenance because patrimonial loss includes prospective gains. See *Jacob vs Cape Town Municipality, 1935 CPD 474*. In the present case, the Deceased has left a minor child who was entitled to maintenance by its mother. It is the child's legal right to claim maintenance from its parent. It can be assumed that the child would be maintenance until she reached the age of 25 years or more. This is based on that since the mother was a university student, she would have

done all that she could to ensure that her child also goes to University. But in this case, it is expected that the child would need maintenance for more than 25 years because of its trauma.

[13] From the evidence of PW3, although the Deceased was at university at the time of death, she had great capacity to earn because she was working before she went to university and would also have worked after obtaining a university degree. It has been assumed in the calculations for maintenance that after a university degree, the Deceased would earn a salary of ₦6,000.00 net, which is a salary earned by graduates in public service on entering the market. The calculations used are attached hereto. The method used here is the annuity calculation.

[14] The court is however, at large not to limit itself to the general calculations based on annuity but to adjust it to the general equities of the case, for example, in this case, although the assumption is normally that the child would require support until 25 years, for a child who went for tertiary education and thereafter being able to support itself in this particular case. It is possible that the child might not be able to earn an income in view of the evidence of PW1 and PW3, which is that the child was traumatized at birth and is therefore disabled. We therefore implore the court to order maintenance of the child for the next of its mother's working life which is assumed to be sixty (60).

[15] As indicated above, the parent who is indigent can claim maintenance or support from the child. In this case, the Plaintiff is employed, earning a meagre salary of ₦800.00, which is insufficient to support herself adequately or to meet

her obligations to educate her other children. She says that the Deceased used to assist her in this regard.

[16] The court will realize that the whole case is based on the Deceased's loss of earning capacity. The Deceased was, at the time of her death, a student at the National University of Lesotho and thus not earning any income except the subsistence allowance from the National Manpower Development Secretariat. She, however, had exhibited earning capacity in that before she went to further her studies, she was employed and therefore earning income and after completion of her studies, she would have improved her earning capacity. Authorities have indicated that in assessing such damages, the court should not rely purely on a strict mathematical calculation we have provided above. See *Glass vs Santam Insurance Co. Ltd 1992 (1) SA 901* . In the case of *Goldie vs City Council of Johannesburg 148 (2) SA 920*. The court indicated that actuarial calculations give the court a guide in arriving at future earning capacity. See *Fleteher vs Autocar & Transporters Ltd. (1968) 1 ALLER 726 739-741* the court indicated that an enquiry into damages for loss of earning capacity is of its nature, speculative, because it involves the prediction of the future... all that the court can do is to make an estimate which is often a rough estimate.

[17] The court is now open to two approaches. One is for the judge to make a round estimate of an amount which seems to him to be fair and reasonable. The other is to try to make an assessment by way of mathematical calculations on the bases of assumptions resting on evidence. Either approaches involves guesswork to a greater or lesser extent. But the court cannot for this reason adopt a *non possumus* attitude and make no award. It is on the basis of these

authorities that we submitted that the court is at large to use discretion to award damages as claimed in the summons.

[18] Apart from loss of support that the child has suffered, we ask the court to award damages for its own trauma which has resulted in its loss of amenities of life. Evidence has shown that this child is not developing normally. The child is still in nappies at the age of almost four (4) years and is still not speaking. The child was not able to walk until almost four (4) years of age. It is on this basis that a claim for the child as prayed for should be awarded.