

**IN THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**CIVIL ACTION No. 522 of 2007**

**BETWEEN**

**LUSE SENIKAU BULIVOU** an infant suing by TalasaUsumaki  
her mother and next friend of Natogadravu Village,  
Tailevu South.

**PLAINTIFF**

**AND**

**DR. KATHERINE YEN-HEE KIM** of No. 44, PathikCresent,  
Namadi Heights, Tamavua.

**1<sup>st</sup> DEFENDANT**

**AND**

**THE PERMANENT SECRETARY FOR HEALTH**

**(DR. LEPANI WAQATAKIREWA)** OF No. 88,

**Amy Street, Dinem House, Toorak, Suva.**

2<sup>nd</sup> DEFENDANT

AND

THE ATTORNEY GENERAL OF FIJI, 7<sup>th</sup> Floor, Suvavou House, Suva.

3<sup>rd</sup> DEFENDANT

**Counsel** : Mr. D. Singh for the Plaintiff.  
Mr. S. Chandra for the 1<sup>st</sup> Defendant.  
Mr. A. Prakash and Ms. K. Naidu for the 2<sup>nd</sup>& 3<sup>rd</sup> Defendants.

**Date of Hearing** : 15<sup>th</sup> August, 2016.

**Written Submissions** : 29<sup>th</sup> August, 2016, 02<sup>nd</sup> September, 2016 and 05<sup>th</sup> September, 2016.

**Date of Judgment** : 18<sup>th</sup> October, 2016.

**JUDGMENT**

[1] The plaintiff instituted these proceedings seeking damages, both general and special on the basis that she suffered disabilities due to the negligence of the 1<sup>st</sup> defendant who is a doctor attached to the Colonial War Memorial Hospital (C.W.M. Hospital).

The 2<sup>nd</sup> defendant has been sued Pursuant to Hospitals and Dispensaries Act (Cap 110) and the 3<sup>rd</sup> defendant has been sued pursuant sections 3(2) and 12(2) of the State Proceedings Act (Cap 24).

- [2] The plaintiff, who was an infant, less than two months old, was admitted to the C.W.M. Hospital and was diagnosed with neonatal meningitis, neonatal septicemia, neonatal urinary tract infection, dehydration, paralytic ileus, recurrent seizures, anemia and scabies infection.
- [3] The plaintiff was treated for 22 days and medicine was administered intravenous. On 04<sup>th</sup> November 2004 the staff nurse who was on duty discovered extravasations on the plaintiff's left wrist and the plaintiff had to undergo an elective skin grafting. It is the position of the plaintiff that this was due to the negligence of the 1<sup>st</sup> defendant.
- [4] It is the evidence of the mother of the plaintiff that on 03<sup>rd</sup> November, 2004 at about 7 a.m. the child was taken to the operating theatre and she was asked to sign the consent form. When she asked to wait for her husband to come the doctor had informed her that if they wait the cells would die and the arm would have to be amputated and then she signed the consent form. After the surgery the child was crying in pain and she lost weight. The child, after the surgery, was taken to the pediatric care unit and two days thereafter she was transferred to the child care unit. It is the evidence of the mother of the plaintiff that the 1<sup>st</sup> defendant thereafter came and apologised for not removing the needle. On 15<sup>th</sup> November, 2004 the doctors have performed another surgery on the child and the witness had requested that medicine be given orally which the doctors refused because the child was too small for oral administration of medicine.
- [5] The plaintiff's mother also testified that the skin grafting done at the C.W.M. Hospital was not successful and the patient was referred to a doctor from Australia who was attached to the Lautoka hospital where a successful skin grafting was done on the child.
- [6] The defendants while denying the particulars of negligence as averred in paragraph 12 of the statement of claim of the plaintiff averred that all proper and adequate

measures were taken in treating the plaintiff and that the defendants regularly and routinely checked the plaintiff for intravenous drips and medication.

[7] At the pretrial conference the parties admitted the following facts.

1. The plaintiff was born on 12<sup>th</sup> September, 2004 and only 51 days old when she suffered injuries to her left wrist after being administered intravenous drips at C.W.M. Hospital.
2. The 1<sup>st</sup> defendant is a medical practitioner and was at all material times a doctor at C.W.M. and was a servant or agent of the 2<sup>nd</sup> defendant.
3. The 2<sup>nd</sup> defendant is sued pursuant to Public Hospitals and Dispensaries Act (Cap 110).
4. The 3<sup>rd</sup> defendant is sued pursuant to section 3(2) and 12(2) of the State Proceedings Act.
5. The plaintiff was administered intravenous drips and the extravasations were found by a staff nurse on 3<sup>rd</sup> November, 2004 at midnight.
6. The plaintiff was admitted to C.W.M. Hospital with the following conditions:
  - (i) Neonatal meningitis;
  - (ii) Neonatal septicemia;
  - (iii) Neonatal urinary tract infection;
  - (iv) Severe dehydration;
  - (v) Paralytic ileus;
  - (vi) Recurrent seizures;
  - (vii) Anemia; and
  - (viii) Scabies infection.

[8] According to the minutes of the pretrial conference following are the issues for determination;

1. Whether the plaintiff needed adequate and proper medical care and entered into a contract with the hospital that she would receive such care for the consideration of fees on her behalf before her admission?

2. Whether on 02<sup>nd</sup> November, 2007 while the plaintiff was admitted at the said hospital she was being administered intravenous drips by needle which resulted in he left hand being infected and had to be subjected to fasciotomy and elective skin grafting and she and she sustained injury, loss and damage?
3. Whether the 1<sup>st</sup> defendant and/or other doctors and/or medical personnel including interns, in the employment of the Government of Fiji treated the plaintiff in such grossly negligent manner and through want of care that her left hand got badly infected at the site where intravenous drip needle was inserted due to chemical irritation with phlebitis/ulceration and compartment syndrome secondary to extravasation of intravenous fluids intravenous drugs that it had to be subjected to elective skin grafting?
4. Whether the plaintiff's injury, loss and damage was caused by negligence on the part of the defendants and/or by reason of treatment provided by the defendant?
5. Whether the defendants are not guilty of negligence if their acts or omissions were in accordance with accepted clinical practice?
6. Whether the plaintiff is entitled to general damages and if so then, the quantum?
7. Whether the plaintiff is entitled to special damages (which are continuing and particulars whereof will be filed later) and if so then, the quantum?
8. Whether the plaintiff is entitled to future costs of future care and if so then, the quantum?
9. Whether the plaintiff is entitled to interest and, if so then, the quantum?
10. Whether the plaintiff is entitled loss of earning capacity and, if so then, the quantum?

11. Whether the plaintiff is entitled to costs and, if so then, the quantum?

- [9] The main issue for determination here is whether the damage was caused to the plaintiff due to the negligence of the 1<sup>st</sup> defendant. The burden is fairly and squarely on the plaintiff to prove on the balance of probabilities that she sustained injuries due to the negligence of the 1<sup>st</sup> defendant. Then and only then the 2<sup>nd</sup> and 3<sup>rd</sup> defendants become vicariously liable for the negligence of the 1<sup>st</sup> defendant.
- [10] Before coming to the evidence adduced by the plaintiff it is important to consider what is meant by negligence in tort law and the extent of the burden of proof rests on the plaintiff.
- [11] Duty, breach, causation, and damage are the elements which together make up any successful negligence claim. Their requirements may be rephrased as a series of questions, each of which must be answered affirmatively if the claimant is to win:

Does the law recognize liability in this type of situation (duty)?

Was the defendant careless in the sense of failing to conform to the standard of care set by law (breach)?

Has the claimant suffered harm (damage) for which the law regards the defendant as responsible either in whole or in part (causation)?<sup>1</sup>

- [12] In this case there is no dispute that the plaintiff was administered intravenous drips and the extravasations were found by a staff nurse on 3<sup>rd</sup> November, 2004 at midnight. This fact has in fact been admitted by the parties at the pretrial conference.
- [13] The question is due to whose negligence the injuries were caused to the defendant? The burden is on the plaintiff to establish that it was the 1<sup>st</sup> defendant's negligence that caused extravasation.
- [14] The plaintiff's mother's evidence is silent on the question as to who inserted the cannula for the intravenous administration of antibiotics. Her evidence is that the extravasations were found in the plaintiff's hand after three weeks of treatment and

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<sup>1</sup>Markesinis and Deakin's Tort Law, Seventh Edition (2013), page 99

when the child started crying she had called the 1<sup>st</sup> defendant who was the doctor on duty. The 1<sup>st</sup> defendant had given the patient antibiotics saying that she was having meningitis. Later the plaintiff's mother complained to the nurse who took the patient to the intensive care unit and the medicine was administered by a machine. The plaintiff mainly relied on the apology tendered by the 1<sup>st</sup> defendant for not removing the needle, in proving that it was the negligence of the 1<sup>st</sup> defendant that caused these injuries.

[15] The 1<sup>st</sup> defendant testified at the trial. According to her she was not the doctor who admitted the patient. She also denied that she treated the patient. While denying the position of the plaintiff's mother she stated that the plaintiff's mother never called her and she never attended to this patient. At the time she saw the patient the cannula had already been inserted into the hand of the plaintiff. From this evidence one thing is absolutely clear that is that for about three weeks from the date of admission of the plaintiff she had had no complications of this nature and the cannula had been on her hand during this period and the intravenous administration of medicine had also been done.

[16] The defendant called Dr. Lisi Tikoduadua who is a paediatric consultant at the Colonial War Memorial Hospital. Her evidence is that intravenous administration of antibiotics is the best way of treating a patient with septicemia and neonatal meningitis. She tendered in evidence the entire medical record as "D1".

[17] According to the medical record "D1" resiting of the cannula had been done eleven times up to 02<sup>nd</sup> November, 2004. Resiting is removing the cannula and inserting it into another vein.

[18] Extravasation according to the medical dictionary is the inadvertent administration of a vesicant into the tissues; the intensity of the irritating action is so severe that plasma escapes from the extracellular space and blisters are formed. Large extravasations of some medications may lead to contractures, with the need for debridement and grafting and in severe cases amputation.

- [19] The hospital staff had been careful enough to monitor the intravenous administration of medicine very carefully. According to the medical record resiting had been done every other day. Therefore, it cannot be said that the doctors, especially the 1<sup>st</sup> defendant neglected the patient. It is also pertinent to note that that the evidence does not show that extravasation has not occurred on the day the last resiting was done. The last resiting was done, according to the medical record, on 02<sup>nd</sup> November, 2004 and the complications were noticed on 03<sup>rd</sup> November, 2004, more than twenty four hours later. The situation may have aggravated due to not removing the cannula immediately after the complications was shown but the responsibility cannot be attributed to the 1<sup>st</sup> defendant for the occurrence of extravasation. It cannot be said that the doctors were negligent because immediately after they were informed about the complications they have attended to the patient.
- [20] There is no evidence as to how the antibiotics administered intravenous leaked out to the tissues of the plaintiff's hand. It can be due to various reasons. For an example as admitted by the plaintiff's mother she had covered the cannula with a napkin and when it was removed only she found the extravasation on the arm. There must be evidence for the court to arrive at the conclusion that extravasation was due to the negligence of the 1<sup>st</sup> defendant or other doctors who attended to the plaintiff. It cannot arrive at conclusions based on assumptions. The evidence adduced by the plaintiff does not show that the 1<sup>st</sup> defendant or the other doctors or nurses were in any way negligent.
- [21] Negligence is a bad result when the effort does not reflect reasonable standards of patient care. A bad result despite good and reasonable effort is called misadventure which does not amount to negligence.
- [22] Since the plaintiff has failed to establish negligence on the part of the 1<sup>st</sup> defendant, the question of damages does not arise for consideration.
- [23] For the reasons aforesaid the court is of the view that the plaintiff has not been successful in establishing the negligence on the part of the 1<sup>st</sup> defendant or other



doctors or nurses who attended to her while being hospitalized. Accordingly, I make the following orders.

ORDERS

1. The writ of summons filed on the 07<sup>th</sup> November, 2007 is struck out and the plaintiff's action is dismissed.
2. Taking all the circumstances into consideration I make no order for costs of this action.

  
Lyone Seneviratne,

JUDGE.



18<sup>th</sup> October, 2016.