

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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CB (a child by her mother and next friend)

Plaintiff:

v

BELFAST HEALTH AND SOCIAL CARE TRUST

Defendant:

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STEPHENS J

[1] I have anonymised this judgment and I have imposed a reporting restriction given the age of the plaintiff and her present lack of knowledge of the events which occurred when she was 1 year old. Knowledge of those events should come from her parents not from a report of these proceedings. There should be no report of this case which either directly or indirectly identifies the plaintiff or any member of her extended family.

[2] The plaintiff, CB, brings this action alleging medical negligence in relation to an operation which was performed on 12 November 2007. The purpose of the operation was to burst a cyst on her kidney. At the date of the operation she was one year old having been born in November 2006. The operation was to be performed as a day case. It was not an open procedure. During the course of the operation the plaintiff's small bowel was perforated and she received a laceration of her bladder. The defendant's admit liability for these injuries and for the consequences that ensued. After the operation the damage to the plaintiff's bowel and bladder were not appreciated and she was discharged. That evening, at home, she became extremely unwell with abdominal distension and sepsis caused, as things subsequently transpired, by the leaking of material from her bowel into her abdomen. She was re-admitted to hospital. She was extremely unwell.

[3] On 13 November 2007 a cystogram was performed which investigation demonstrated a filling defect arising posteriorly near the bladder base with extrication of contrast posteriorly. Then on 14 November 2007 an ultrasound of her abdomen was carried out which confirmed free fluid within the abdominal cavity with echogenic clots in addition there was fluid lying outside the bladder within the pelvic cavity. On 14 November 2007 at 5 pm a laparotomy was performed. That operation revealed a sizeable, clean perforation in the mid-ileum approximately 120 cm below the duodenal flexure well above the umbilicus. No obvious leaks were seen from the bladder. The perforation of the bowel was closed. The laparotomy was carried out under general anaesthetic. It was an open operation leaving an abdominal operation wound. The plaintiff remained in hospital until 21 November 2007 upon which date she was discharged. That was nine days after her initial admission.

[4] Upon discharge the plaintiff's parents expressed some concern regarding the appearance of the operative wound. Unfortunately either CB was then suffering from a wound infection or subsequently developed a wound infection. On 24 November 2007 she required to be re-admitted to hospital to receive intravenous antibiotic treatment for the wound infection. The plaintiff's mother describes how the wound had opened and was extremely unpleasant. On this occasion she required to be in hospital for 3 days being discharged on 27 November 2007. She was followed up at home with first daily attendances and then every 2 to 3 days. By approximately Christmas 2007 the wound had healed and the plaintiff had recovered from the laparotomy and the wound infection.

[5] The plaintiff has no memory of these events, she undoubtedly suffered pain and distress but given her age she does not remember anything about that. The plaintiff is left with an abdominal scar though she has not been told what caused it. She is at risk of developing an adhesive small bowel obstruction requiring medical even surgical intervention. The agreed medical evidence is that the greatest risk of an adhesive small bowel obstruction occurring is in the early years after the bowel perforation but the plaintiff is still at risk of this complication occurring even though she is now over 7 years from surgery. The expert medical witnesses have also agreed the degree of risk as follows:

- (i) The subsequent lifetime risk of developing adhesive small bowel obstruction requiring medical intervention would be approximately 5%.
- (ii) If the plaintiff were to develop adhesive small bowel obstruction then in 25% of occasions this would not settle with conservative medical management and a further abdominal operation would be required.

Accordingly, it can be seen that the risk of a further abdominal operation acting being required is extremely small, being 1.25%.

[6] Liability having been admitted, Mr McCollum QC, who appeared with Mr Fitzpatrick on behalf of the plaintiff, sought compensation for a number of discreet aspects of this case, namely:

- (a) The injury to the plaintiff's bowel and bladder.
- (b) The severe illness of the plaintiff as a result in particular of the perforation of her bowel.
- (c) The period that she was required to be in hospital. It is implicitly asserted and the plaintiff's mother's evidence was that children of the plaintiff's age should be uninterrupted in forming attachments which are such an important part of interaction between both parents and a child.
- (d) The fact that she required an operation under general anaesthetic.
- (e) The wound infection.
- (f) Scarring.

[7] The plaintiff also claims damages for the costs of a scar revision procedure in the amount of £2,800 if a general anaesthetic is required or £1,800 if the procedure could be carried out under a local anaesthetic.

[8] The task that has to be undertaken in assessing the amount of the damages was expressed as follows by Lord Blackburn in *Livingstone v Rawyards Coal Company* [1880] 5 Appeal Cases 25 at 39:

"... where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong ..."

Lord Pearce expressed it differently in *H West & Son Ltd v Sheppard* [1963] 2 All ER 625 at 642 when he said:

"The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages."

[9] In cases involving multiple injuries it is open to the court to attribute a value to each and to adjust the total (see *Wilson v Gilroy* [2008] NICA 23). The Court of Appeal in that case first analysed the individual injuries sustained by the plaintiff attributing a value to each injury. There is not an automatic award of the addition of those individual figures. At the end a general check should be carried out to determine whether the addition of the individual figures leads to an overall award which is appropriate. The Court of Appeal stated that:

“In cases involving a multiplicity of injuries each of which calls for individual evaluation it is well established that one should check the correctness of the aggregate sum which is produced when one adds together the amounts for all of them by considering the figure on a global or general basis. Essentially this involves an intuitive assessment of the suitability of the sum produced to compensate the overall condition of the plaintiff.”

[10] We are assisted in the task of assessing general damages by the Guidelines for the Assessment of General Damages in Northern Ireland (“the Guidelines”). Bodily injury is a deprivation in itself which entitles a plaintiff to damages according to its gravity. So bodily injury is not only a cause of pain and suffering but it is also the loss of a good thing in itself and is compensatable. The difficulty with the application of the Guidelines is that they do not specify what element of an award is attributable to what might be described as the basic element of the condition. By the basic element I mean the core figure if one could imagine the condition occurring without any pain and suffering.

[11] In *Gardner v Scruttons PLC and others* [1991] NIJB 243 the exercise of determining the core figure was carried out by Lord Justice McCollum in relation to the condition of mesothelioma. In a detailed analysis of the decision of the Court of Appeal in *Simpson v Harland & Wolff* [1998] NI 432 and relying on the speech of Lord Pearce in *H West & Son Ltd and another v Sheppard* [1964] AC 326 at 365 and 368 McCollum LJ ruled that the core element of mesothelioma was about one third with the remaining two thirds to compensate the plaintiff for the element of pain and suffering, loss of amenity and personal consequences which were the subjective aspects of the cases which affected him in an individual way. McCollum LJ went on to say that the one third figure which he arrived at by analysing the decision in *Simpson v Harland & Wolff* coincided with his own estimate in the round of the appropriate figure to compensate for the development of mesothelioma if one could imagine that occurring without any perceived physical pain and suffering.

[12] In *Gardner* Lord Justice McCollum awarded the basic element or core element to which he added an amount for the pain and suffering that the deceased had actually endured to arrive at a total award. In *Gardner* Lord Justice McCollum was not indicating that the core element of all awards is one third. His detailed reasoning and his own estimate were all addressing and restricted to the condition

of mesothelioma. I consider that the approach in *Gardner* which deals with the condition of mesothelioma is of assistance in this case as a check. However for the purposes of this case I will adopt as the primary method the assessment of compensation for the pain and suffering that the plaintiff undoubtedly endured, for the injuries that were undoubtedly inflicted on her. I will take into account that the healing process in children at that age is much quicker. I will take into account the duration of the pain and suffering. I will also take into account that she has no recall and no intrusive or disturbing memories though she will have to be told at an appropriate time as to her medical history.

[13] I will then carry out a notional check by relation to the core value adding in an appropriate figure for the pain that she endured and the emotional upset that I consider that she has endured and will have to endure when she is told by her parents which emotional upset is to be seen in the context that her mother is still very upset about what occurred and some aspect of that, try as hard as a mother will, will be passed on to the plaintiff.

[14] I consider it appropriate to consider two aspects of this case individually. The first is all the events for which the defendant is liable and which occurred in 2007 together with the risks of adhesion. The second is the scarring aspect. I will then look at the case globally and attribute an overall figure at the same time carrying out a notional check against the core value with the additional elements of the pain and suffering that the plaintiff actually went through.

[15] In relation to the events in 2007 I need not repeat my factual findings except to say that the plaintiff received very unpleasant injuries that caused her to be very ill and required an operation under general anaesthetic with her recovery being stormy with a wound infection and a requirement for IV antibiotics on an inpatient basis. The range in the Guidelines at page 21, letter D, is £14,000-£42,000 and the description is “penetrating injuries causing some permanent damage but an eventual return to natural function and control.” That bracket is a wide bracket. The core element may vary depending on the seriousness and gravity of the penetrating injury. The word “eventual” is inappropriate for this case. That word indicates some prolonged period of upset to a major bodily function. There was no prolonged period of upset but rather an acute and very unpleasant condition. I consider that an appropriate amount of damages for this aspect of the case, that is for the events of 2007, is an award of £15,000.

[16] I turn to consider the scarring element. That is to be seen in the context of a well presented girl of the age of 8. Even at her present age one can see that she takes care of and pride in her appearance. Both of her parents have been extremely supportive of her playing down the impact of the scar. I have seen the scar, it is much worse than is depicted in the rather inadequate photographs. Scars are not only a cosmetic blemish but affect confidence or have the ability to affect confidence particularly in adolescence. I consider that an appropriate award is an award of

£30,000. I include in that figure the cost of scar revision which I hold will on the balance of probabilities take place but under local anaesthetic.

[17] I stand back and adjust the global award by making a total overall award of £42,500. I enter judgment for the plaintiff for that amount.