

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2014/0178

BETWEEN:

[1] **MARVA ROGERS**
[2] **MARVA ROGERS**
(Executrix of the Estate of Raleigh Wint also spelt Whint, deceased)
Claimants

and

[1] **HENRY PARYAG**
[2] **WILLIAM ALVAREZ**
[3] **TANYA EDWARDS**
[4] **ATTORNEY GENERAL OF GRENADA**
Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr George Prime with Keith Scotland for the Claimants

Dr. Francis Alexis QC for the First Defendant

Mr. Adeybayo Olowu of the Attorney General's Chambers for the Second,
Third and Fourth Defendants

2022: January 26
February 15
May 3

JUDGMENT

[1] **ACTIE, J:** This claim deals with the determination of liability for the injury and death of Raleigh Wint (also spelt Whint) (hereafter “the deceased”) resulting from a motor vehicular accident which necessitated medical treatment. Marva Rogers brings this action in her personal and beneficial capacity, and as Executrix of the estate of the deceased and pursuant to Section 2 of the Law Reform (Miscellaneous Torts) Act¹.

¹ Chapter 67 of the Continuous Revised Edition of the Laws of Grenada

Claimants' Case

☑ By claim form filed 10th April 2014 the claimants (hereafter collectively referred to as "the claimant") claim as against the first defendant, Henry Paryag for the following reliefs:-

- (1) Compensation for loss and damage resulting in bodily injuries to and the ultimate death of the deceased, caused by the negligent driving of motor vehicle Reg. No. PAF890 by the first defendant on or about the night of 10th October 2013 on the Grand Anse main road in the parish of Saint George in the State of Grenada;
- (2) Damages under the Law Reform (Miscellaneous Torts) Act Cap. 167 for the benefit of the estate of the said deceased for the loss of expectation of life and consequential loss ensuing from the death of the deceased.
- (3) Such further or other relief as the court shall deem fit.
- (4) Interest and Costs.

As against the second, third and fourth defendants:

- (1) Compensation for the premature and negligent discharge of the deceased from the General Hospital resulting in pain and suffering and eventual death of the deceased on 16th October 2013;
- (2) Damages under the Law Reform (Miscellaneous Torts) Act Cap 167 for the benefit of the estate of the deceased due to the loss of expectation of life and consequential loss ensuing from the death of the deceased;
- (3) Such further or other reliefs as the court may deem just.
- (4) Interest and Costs.

- [3] It is the claimant's pleaded case that on or about the evening of 10th October 2013, the deceased was in the process of crossing the Grand Anse main road, when he was struck down by a vehicle owned and driven by the first defendant. On impact, the deceased was thrown into the air falling onto the bonnet of the vehicle, then off the front of the vehicle onto the road and run over by the first defendant.
- [4] The claimant contends that the accident was caused solely by the negligent driving of the first defendant, and that, as a consequence of the accident, the deceased sustained multiple injuries and suffered pain until his death.
- [5] The particulars of negligence claimed of the first defendant are as follows:
- (1) Failing to keep any or any proper lookout;
 - (2) Failing to observe or heed the presence of the deceased as he was crossing the said road;
 - (3) Failing to observe in time, or at all, the presence of the deceased in the middle of the road;
 - (4) Driving at a speed that was excessive and unsafe in all the circumstances;
 - (5) Approaching a pedestrian crossing at a speed that was excessive and unsafe in all the circumstances;
 - (6) Failing to apply his brakes in time or at all or otherwise so to steer, manage or control the said vehicle as to avoid colliding with the deceased;
 - (7) Failing to give any or any adequate warning of his approach; and
 - (8) Driving without due care and attention.
- [6] The deceased was taken to the General Hospital on the night of the accident, and was discharged on 14th October 2013, (three (3) days after the accident) by either the third defendant acting under the supervision of the second defendant, or by both the second and third defendants, acting jointly over the objections of the first named claimant.
- [7] The claimant avers that in all the circumstances, the discharge of the deceased was either negligent or reckless or both and resulted in the death or acceleration of the death of the deceased. The claimant further avers that it cannot, by any

standards, and certainly not by the standards of good medical care and practice, be consistent with normal medical practice and treatment to have discharged such a person as the deceased with the injuries with which he presented upon admission to the General Hospital, within four days of his said admission.

[8] The particulars of negligence claimed of the second and third defendants are as follows:

- (1) Discharging the deceased from the General Hospital despite his obvious debilitating injuries at the time of discharge;
- (2) Discharging the deceased when he was unable to ambulate and to care for himself;
- (3) Discharging the deceased when he was unable to sit or stand;
- (4) Discharging the deceased without first ensuring that he had available to him, home care facilities to properly continue his treatment and healing;
- (5) Failing to treat the deceased adequately or at all;
- (6) Wrongly concluding that the deceased was not suffering from any serious condition;
- (7) Discharging the deceased with broken ribs visibly probing his thoracic region; and
- (8) Failing to pay any or any sufficient heed to the claimant's complaints about the irregular breathing of the deceased and his condition.

[9] As to the recklessness of the second, third and fourth defendants, although pleaded and particularised, same was not advanced in submissions by the claimant, therefore the court is not required to consider the point.

[10] Immediate upon his discharge from the hospital, the deceased's condition deteriorated so rapidly that he had to be readmitted to the General Hospital on or about 15th or 16th October 2013 and died on 16th October 2013. The claimant avers that the second, third and fourth defendants' position that the deceased's breathing sounded normal can only serve to confirm the negligence pleaded given his representation one day after discharge with dyspnoea followed by death due to pulmonary thromboembolism. The claimant contends that dyspnoea is a

manifestation of pulmonary embolism or thromboembolism, and that the second, third and fourth defendants' position that the cause of death has nothing to do with them is a compounding of their negligence with callousness.

- [11] The claimant contends that prior to his death, the deceased suffered needless and excessive pain, dying as a consequence, and that by reason of the injuries and death of the deceased, the claimant suffered loss and damage.

First Defendant's Case

- [12] The first defendant in a succinct defence admits that he was driving motor vehicle Reg. No. PAF890 on 10th October 2013. He avers that on said date it was raining heavily, and he was driving at the speed of about 20 to 25 mph.
- [13] The first defendant denies that the deceased was thrown into the air and ran over, and contends that the deceased, without warning, came from behind a parked vehicle and stepped into the road, walking into and striking the extreme left of the vehicle.
- [14] The first defendant also states that the deceased was wearing dark clothing², and denies that the injuries suffered by the deceased were caused by his negligence.

Second, Third and Fourth Defendants' Case

- [15] The office of the Attorney General filed a defence on behalf of the second, third and fourth defendants.
- [16] The third defendant denies that she was a medical practitioner employed at the General Hospital and, in particular, that she was a servant or agent of the Government of Grenada.

² The claimant admits to the deceased wearing dark clothing at para 2 of the reply to defence of first defendant filed 17th June 2014.

- [17] The second, third and fourth defendants assert that the discharge of the deceased in the circumstances was not irregular but consistent with normal medical practice and treatment of the deceased's case.
- [18] The second, third and fourth defendants deny that the care delivered to the deceased was negligent in any way. They aver that the deceased received the most appropriate care in the circumstances, and that the pain allegedly suffered by the deceased and his subsequent death were in no way a result of the negligent actions and/or omissions of the second, third and fourth defendants.
- [19] These defendants assert that at the Accident and Emergency Department, the deceased's shoulder was reduced, and he was transferred to the male medical ward where the second defendant attended to him and carried out routine medical checks. The second defendant ensured that the deceased's shoulder was stabilized and then referred the deceased to general surgery for his other reported injuries.
- [20] The deceased was evaluated by the general surgery team on the morning of 11th October 2013. On physical examination, the deceased's breath sounds were auscultated normal and strong in both pulmonary fields and no abnormal findings were detected on examination of the deceased's chest. X-rays were ordered and it was found that there were fractures to the deceased's ribs. Further examination showed no flail chest, no pneumothorax nor pleural effusion was found.
- [21] Further examination of the deceased revealed that he was able to move his limbs, thus based on the findings of the examination and x-ray, the general surgeon concluded that the required course of treatment was pain medication and rest to allow healing, as, according to the third, second and fourth defendants, injury to ribs is normally treated with pain medication and oxygen therapy, which the deceased received.
- [22] The second, third and fourth defendants assert that the deceased was observed for over 72 hours during which time he remained stable. Without there being further reason for the deceased to remain at the General Hospital, he was

discharged into the care of relatives who were guided as to how he should be cared for at home.

- [23] The deceased was readmitted on 16th October 2013 and was observed to be restless. Mild respiratory distress of the deceased was observed around 7:35 am, and around 12:25 pm, the deceased was observed with chesty sounds and was suctioned. A hep-lock was installed and blood was taken for investigation, but vitals appeared normal. Around 12:45 pm, the deceased's general condition deteriorated, and he was thereafter pronounced dead.
- [24] The second, third and fourth defendants deny the assertions that the discharge of the deceased was negligent, and that it led to the death of the deceased. The second, third and fourth defendants assert that the causes of death identified in the pathology report have not been shown by the claimant to be as a result of the actions or otherwise of the said defendants. The second, third and fourth defendants further state as to the assertion by the claimant that the deceased was in pain that he was discharged on pain medication.
- [25] Although witness summaries by the second and third defendants and Jeanelle Alexander were filed and served on behalf of the second, third and fourth defendants, only the third defendant's witness summary was admitted into evidence. The witness summary of the second defendant was not admitted as he did not attend court.
- [26] The witness summary of Jeanelle Alexander was not admitted as she disputed its content and gave evidence that she could not recall the matters stated. The witness took strong objections to the contents of the witness summary and does not confirm the authenticity of the contents of the witness summary.
- [27] The witness contends that the starting point in paragraph 1 which indicates that she was employed as a nurse in excess of ten years when she had only been appointed for a few months is erroneous. Secondly, the witness summary spoke of all the matters attended by her when she was only able to deal with a few issues. The witness also disputes the assertion in the witness summary that she

was unavailable in 2016. She states that no one contacted her for the preparation of the witness summary or statement. She further contends that she was only shown a copy of the witness summary on 27th April 2021. It was the first time that she was seeing the witness summary which she never approved.

[28] A witness summary like a witness statement should contain the evidence which that person would be allowed to give orally at trial. The court in **Ormiston Arnold Boyea V Luke Boyea**³ states “

. “The useful starting point is to remind oneself that in this jurisdiction, witness summaries are usually treated as witness statements at a trial. At such hearings a witness for whom a witness summary is filed is generally asked whether the contents are true and correct and comprise his or her testimony, much in the same way as a witness statements treated if he or she responds in the affirmative an application is made for the witness summary to be admitted as the witness’ evidence in chief. There is usually no differentiation in the way in which a witness statement and witness summary are treated”.

[29] The court in light of the strenuous objections by the witness is of the view that the witness summary is not a true reflection of the testimony of Jeanelle Alexander capable of being tendered as evidence for the 2nd to 4th defendants.

Injuries of the Deceased

[30] The injuries of the deceased was outline in statements forming part of the trial bundle. According to Dr. Anneth Mc Leish in a statement dated 24th October 2013, the deceased was initially seen on 10th October 2013, conscious and alert, presenting:

- (1) bruising to right cheek where small area of skin was removed;
- (2) laceration through left ear lobe;
- (3) swollen and depressed head of left humerus;
- (4) abrasions to left lateral chest wall;
- (5) linear bruising to right upper quadrant of abdomen, tender to palpation;

³ SVGHCV2019/0175

(6) bruising and tenderness along left back.

[31] A statement given by Dr. Robert Yearwood dated 11th November 2013 further contends that the deceased presented with multiple rib fractures to the left and right thoracic cavity, left shoulder dislocation and skin abrasions. Dr. Yearwood confirms that on 16th October 2013, the deceased was readmitted with dyspnoea, and was treated for pneumonia.

[32] On the Pathology Report of Dr. Clara Garcia Enriquez dated 18th October 2013, the following injuries of the deceased were reported:

- (1) abrasion with scar on the right cheek measuring 6 x 3.5cm;
- (2) cut in ear measuring 1.5cm;
- (3) wound in the left anterior and lateral part of the chest measuring 2.5cm;
- (4) abrasion measuring 9 x 3cm in the left nipple;
- (5) abrasion in the lower part of the anterior chest measuring 15 x 12cm;
- (6) abrasion measuring 2.5cm, below measuring 2 x 1.5cm;
- (7) low part of the back part of the neck abrasion measuring 5 x 1cm;
- (8) extensive abrasion measuring 35 x 18 cm in the central part of the back and buttock; Cranial cavity:
- (9) hematoma of the scalp measuring 12 x 5cm, parietal and occipital; Brain meninges etc:
- (10) edema and meningeal congestion, focal subarachnoidal haemorrhage in both parietal and occipital region; Thoracic cavity:
- (11) intercostal hematomas in both sides between 1st and 4th ribs;
- (12) fracture of the D2 and D4;
- (13) fracture from the 4th and 9th ribs on the left side; Mouth, tongue, oesophagus, larynx, trachea, lungs and pleura:
- (14) pleura: deposit of abundant fibrin in left lung. Both lungs show friable parenchyma in the base.
- (15) pulmonary arteries, thromboembolism in the emergency of both pulmonary arteries (saddle embolism); Pericardium, heart and blood vessels:
- (16) left ventricle hypertrophy.

[33] Dr. Clara Garcia Enriquez further noted the cause of death of the deceased, as shown by the examination, to be:

- (1) pulmonary thromboembolism.
- (2) multiple traumas to the body; and
- (3) road traffic accident.

Legal Analysis

Whether the road traffic accident which led to the injuries of the deceased was caused by the negligence of the first defendant

[34] To establish negligence, a claimant has to prove that there was a duty of care, that the defendant breached that duty, and that the claimant suffered injury, loss or damage as a result of the said breach.

[35] All road users owe a duty of care to fellow road users to drive with the degree of skill and care to be expected of a competent and experienced driver⁴. In the case of **Bernadette Sampson v Samuel Charles & Anr**⁵, Ellis J stated the following:

“The courts have been very clear as to the duty of care owed by driver to pedestrians. A driver of a vehicle on the road is under a duty to take proper care not to cause damage to other road users including other drivers, cyclists and pedestrians. In order to fulfil this duty he should keep a proper lookout, observe traffic rules and signals and avoid excessive speed.”⁶

In the same paragraph the learned judge notes further:

“The courts however put a very high duty on a road user vis-à-vis pedestrians. Pedestrians are of course particularly vulnerable, may not always be paying attention to cars and other vehicles, may not always be sober, or may be children whose visual and spatial awareness is not as developed as that of an adult. Drivers are expected to take all these factors into account and owe a duty of care to the pedestrian.”

⁴ *Nettleship v Weston* (1971) 3 All ER

⁵ GDAHCV2009/0552

⁶ Para 44

[36] In **Clarence Martin et al v Edris George**⁷ Lanns J (Ag.), relied on dicta of Rawlins J in **Cheryl Edwards, Administratrix of the Estate of Janique Lewis v Ethel Mills**⁸ wherein it was stated, inter alia:

“Drivers of motor vehicles are under a duty to exercise due care on the road. They are expected... to determine what other users of the road are doing. They are expected to maneuver their vehicles in order to prevent and avoid accidents...”

[37] On the other hand, in **Bernadette Sampson v Samuel Charles & Anr**⁹ it was held that there is also an onus on the pedestrian to exercise reasonable care for his own safety in proportion to the danger to be avoided and the consequences that might be reasonably anticipated. Pedestrians who enter a stream of traffic and disrupt the flow or fail to use crosswalks or who “dart” in front of a vehicle have generally been held to be negligent or at least partially negligent¹⁰.

[38] It is the claimant’s evidence that the area of the accident was well lit, albeit that the deceased was wearing dark clothes at the time of the accident, which was around 6:40 p.m. It is also the claimant’s evidence that the deceased was approximately halfway into the road when the accident took place.

[39] The defendant contends that it was raining at the time of the accident, but the evidence of Adriel Parke and police report of PC Crosley Daniel refute this and confirm the claimant’s position that it began raining after the accident.

[40] In addition, witness for the claimant, Adriel Parke, stated that the vehicle continued the same speed, whereas Rondell Hazzard stated that it slowed down, then picked up speed again, and collided with the deceased who was just about the midway point across the road.

[41] There was some inconsistency in the evidence of the witnesses at the visit of the locus in quo as to the exact point of impact. However, what remained constant was the fact the claimant’s vehicle made contact with the deceased. The first

⁷ ANUHCv2013/0206

⁸ Claim No. 168 of 1998

⁹ GDAHCV2009/0552

¹⁰ GDAHCV2009/0552 Bernadette Sampson v Samuel Charles & Anr

defendant admitted hearing a sound and was aware that he had hit someone but stopped approximately some twenty (20) feet away from the impact.

[42] It is also the evidence of the claimant that the deceased was thrown about a foot or two in the air and then fell onto the bonnet and windscreen of the vehicle, where he stayed for a few seconds, then fell off the front of the vehicle and underneath it. The vehicle then passed over the deceased, went up in the air, off the road surface, then back down and continued driving until, witness for the claimant, Adriel Parke, called out to the first defendant to indicate that he had just hit the deceased.

[43] According to **Halsbury's Laws of England**¹¹:

“The duty of the driver of a vehicle may not be satisfied merely by creating a warning noise, and in an emergency, where either the driver or the foot-passenger must alter his course to avoid collision, the driver does not escape liability if he cannot show that he has tried to pull up or to one side.”¹²

[44] The driver/first defendant, in the case at bar, did none of the above to avoid the collision. The court accepts that the vehicle driven by the first defendant collided with the deceased without warning, without decelerating, without taking evasive action, without stopping until signalled to stop by another pedestrian on the road, and with blatant disregard for the duty of care owed to other road users. The court also accepts that the area of the accident was well lit, the headlights of the vehicle were on, and that at the time of the accident, it was not yet raining, and the deceased was already well into the road, the first defendant not keeping proper look out. The court is also of the view that the version of events and recollection put forward by the first defendant is unreliable as these conflicts with the evidence of the independent witnesses of the claimant, as well as with the injuries inflicted on the deceased.

[45] Had the first defendant exercised reasonable care, he would have seen the deceased. The evidence demonstrates that not only did the first defendant not

¹¹ 3rd edn, volume 28

¹² Halsbury's Laws of England, 3rd edn, volume 28, para 68

see the deceased, but that he did not acknowledge having run over the deceased until after being signalled to stop by the witness Adriel Parke.

[46] The accident, however, did not take place while the deceased was on the pedestrian crossing. According to the police report of PC Crosley Daniel, the point of impact as directed by Adriel Parke was 34 feet 9 inches away from the crossing. The evidence at the locus in quo visit confirms that the impact was a short distance immediately after the after the pedestrian crossing.

[47] In light of this and based on the first defendant's position that the deceased suddenly walked out into the road, counsel for the first defendant argues in submissions that the deceased was contributorily negligent. The court does not accept this argument of the first defendant. Firstly, contributory negligence was not pleaded in the first defendant's defence. Thus, although the deceased would not have been using the crosswalk during the accident which may have led to partial negligence on the part of the deceased, it would be beyond the purview of the court to rule on same. Secondly, there is a clear duty of a driver approaching a pedestrian crossing to proceed at such a speed as to be able to stop if necessary¹³ and to be cautious to drive at reasonable speed for possible sudden crossing by a pedestrian.

[48] The court is therefore of the view, that the road traffic accident which led to the injuries of the deceased was caused by the negligence of the first defendant.

Whether the second and third defendants owed a duty of care and breached said duty of care in their care of the deceased

[49] With respect to the duty of care, the test as described by Mc Nair in **Bolam v Friern Hospital Management Committee**¹⁴, states:

“...is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art... in the case of a

¹³ Civil Appeal No. 4 of 2003 - Edyth Leonard v Ernest John

¹⁴ [1957] 1 WLR 582

medical man, negligence means failure to act in accordance with standards of reasonably competent medical men at the time... he is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art."

[50] Further, in **Hunter v Hanley**¹⁵ it was stated:

"In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man clearly is not negligent because his conclusion differs from that of other professional men, nor because he has displayed less skill or knowledge than others would have shown. The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of it acting with ordinary care."

[51] The second, third and fourth defendants argue that there was nothing more in the circumstances which could have been done for the deceased, thus there was no negligence on the part of the second and third defendants, and accordingly no liability on the second, third and fourth defendants.

[52] Counsel for the claimants argues that it is not the actions or inactions of one specific doctor or nurse that caused the death of the deceased, but that the entire care of the deceased fell below the required standard of care. Counsel for the claimants also submits that dyspnoea is a symptom of the onset of pulmonary thromboembolism, and that the pain experienced by the deceased during his hospital visits was not managed by the pethidine and voltaren he was prescribed.

[53] Respectfully, without expert evidence to prove same, this argument of the claimants is futile, as the claimants have failed to provide any medical evidence to show that what caused the respiratory complications, or any deterioration of the health of the deceased was attributable to the treatment or discharge of the deceased. The claimants have also failed to present any medical evidence to support the claim that had the deceased not been discharged, the injury or sickness or death of the deceased would not have occurred.

¹⁵ 1955 SLT 231

[54] There is, before the court, commentary produced by Professor Hubert Daisley on the hospital admissions and subsequent death of the deceased, dated 21st April 2014. Professor Daisley states that the x-ray of the deceased's neck reported to be normal could not have been so, since the pathologist on autopsy found fracture of vertebrae D2 and D4. According to Daisley, these are serious injuries which can lead to compression of the cervical spine and paralysis. However, Professor Daisley goes on to state that for these injuries the deceased should have been treated with at least a cervical collar. Indeed, progress notes of the General Hospital evidence that the deceased's treatment was inclusive of a cervical collar negating any alleged negligence in this regard.

[55] Nevertheless, it is also the claimant's evidence that she received no or insufficient instructions from the hospital on how to care for the deceased after he was discharged. The claimant is of the position that the second and third defendants should have realised that home care may not have been suitable for the deceased's medical and personal circumstances. The claimant states further that the hospital paid no attention to her protest that her uncle was in no fit state to be released from the hospital. From the visible state of the deceased's appearance and his abnormal breathing, it was apparent to the claimant that the deceased was not well enough to be released from hospital.

[56] The second, third and fourth defendants state that the deceased was discharged into the care of relatives who were guided as to how he should be cared for at home. They further state that they are not in a position to ensure home care for each and every patient.

[57] Mason J in **Joseph Reece Mangal v Dr. Bottengada Ponnappa et al**¹⁶ stated the following with respect to the discharge instructions given to the claimant in the said case:

“...the defendant has only to show that at the time of the alleged negligence that there was one body, albeit a minority one, of reasonable medical opinion that would have approved of the defendant's actions.”

¹⁶ Claim No. SLUHCV2003/0557

- [58] There is no evidence proffered by the said defendants of how the relatives of the deceased were guided, and what instructions for care were given to them. There is a statement signed by the Chief Medical Officer which includes information explaining the discharge form. This information addressed follow-up visits at outpatient clinics, while the discharge form itself gave a synopsis of the deceased's diagnosis, treatment, as well as outpatient clinic attendance. There is, therefore, no document produced by the second, third and fourth defendants which corroborate their position that guidance was given to the family of the deceased as to his home care.
- [59] The court notes that the medical records for the initial period the deceased spent at the hospital demonstrate that he was stable with mild respiratory issues. The court further notes, however, that a little over a day after discharge, the deceased presented with moderate respiratory issues eventually resulting in death.
- [60] Despite the unavailability of medical evidence to the effect that the care of the deceased was negligent, it is incontrovertible that by the rapid deterioration of the deceased between discharge and readmission (about a mere day after said discharge) home care was not reasonably suitable for the deceased without sufficient instructions on care being given to the claimant.
- [61] The court is of the view that the second and third defendants' omission to provide adequate instructions upon the discharge of the deceased is an error of judgment that would not have been made by a reasonable competent professional man professing to have the standard and type of skill that the defendant held himself out as having, acting with ordinary care¹⁷. The court therefore finds that the second, third and fourth defendants breached their duty of care to the deceased.

¹⁷ Claim No. SLUHCV2003/0557 Joseph Reece Mangal v Dr. Bottengada Ponnappa et al

Whether the death of the deceased was caused by the injuries resulting from the *negligence of the first defendant or the breach of duty of care owed by the second, third and fourth defendants*

[62] The “but for” test for causation requires the claimant to adduce evidence to show that it is more likely than not, that “but for” the defendant’s wrongdoing the relevant damage would not have occurred. With respect to causation, our Court of Appeal in **Rawle Hannibal v The Bvi Health Services Authority**¹⁸ cited the House of Lords in **Sienkiewicz (Administratrix of the Estate of Enid Costello (deceased)) v Greif (UK) Ltd; Kowsley Metropolitan Borough Council v Willmore** stated the following:

“It is a basic principle of the law of tort that the Claimant will only have a cause of action if he can prove, on balance of probabilities, that the Defendant’s tortious conduct caused the damage in respect of which compensation is claimed. He must show that, **but for** the Defendant’s tortious conduct he would not have suffered the damage. This broad test of balance of probabilities means that in some cases a Defendant will be held liable for damage which he did not, in fact, cause. Equally there will be cases where the defendant escapes liability, notwithstanding that he has caused the damage, because the Claimant is unable to discharge the burden of proving causation.”¹⁹

[63] In **Bonnington Castings Ltd v Wardlaw**²⁰, the House of Lords further held that the claimant does not have to prove that the defendant’s breach of duty was the sole or even main cause of the damage, provided he can demonstrate that it made a material contribution to the damage.

[64] Moreover, in **Bolitho v City and Hackney Health Authority**²¹ it is stated that in cases where the breach of duty consists of an omission to do an act which ought to be done, the question is what would have happened if an event which did not occur had occurred.

¹⁸ BVIHCVAP 2017/0002

¹⁹ [2011] UKSC 10

²⁰ [1956] AC 613

²¹ [1997] UKHL 46

[65] There is no expert evidence before the court to the effect that the breach of duty of care by the second, third and fourth defendants in the discharge of the deceased and the insufficient instructions given with respect to the home care of the deceased was the cause of the death of the deceased. There is also no medical evidence before the court which links the pulmonary thromboembolism suffered by the deceased at death to the inadequate discharge instructions of the deceased. Instead, Professor Daisley's report suggests that the extensive trauma from the road traffic accident, dislocated shoulder, extensive contusions and abrasions, and injuries to the neck would have limited the deceased's movement and set the stage for the development of the saddle pulmonary embolism.

[66] The Pathology Report prepared by Dr. Clara Garcia Enriquez further and explicitly lists the multiple traumas to the deceased's body and the road traffic accident, resulting from the negligence of the first defendant, as causes of death.

[67] It was the claimants duty to prove that the intervening medical treatment or premature discharge from the hospital resulted in the death or the acceleration of the death of the deceased. In the absence of medical evidence connecting the discharge and inadequate instructions given to the family of the deceased to the causes of death, the claimant has not discharged the burden of proving causation by the second, third and fourth defendants. Consequently, liability for the death of the deceased rests with the first defendant.

Conclusion

[68] Based on the foregoing, the court finds that the claimants have proven liability on a balance of probabilities against the first defendant for the injuries and eventual death of Raleigh Wint also spelt Whint.

[69] It is therefore ordered and declared as follows:

(1) Judgment is entered for the claimants against the first defendant, Henry Paryag.

- (2) The claim against the second, third and fourth defendants is dismissed.
- (3) The first defendant, Henry Paryag, shall pay damages to the claimants to be assessed, if not agreed within twenty-one (21) days from today's date.
- (4) Failing settlement, the claimants shall file and serve witness statements, submissions with authorities in support of the assessment of damages on or before 30th June 2022.
- (5) The first defendant shall file and serve witness statements, submissions with authorities in response on before the 30th July 2022.
- (6) Liberty to apply for the appointment of expert witnesses.
- (7) The assessment of damages shall be conducted on 17th October 2022.
- (8) The claimants shall pay Prescribed Costs to the 2nd to 4th Defendants in accordance with CPR 65.5 (2) (b) unless otherwise agreed.

Agnes Actie
High Court Judge

By the Court

Registrar