

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

**CCJ Appeal No CV 4 of 2012
BZ Civil Appeal No 16 of 2008**

BETWEEN

RAJU MEENAVALLI

APPELLANT

AND

**GEORGIA MATUTE
JANAE MATUTE
(An infant suing by next friend GEORGIA MATUTE)**

RESPONDENTS

Before The Honourables

**Mr Justice Nelson
Mr Justice Saunders
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson**

Appearances

Mr Godfrey Smith SC and Ms Leslie D Mendez for the Appellant

Mr Fred Lumor SC for the Respondents

JUDGMENT

of

Justices Nelson, Saunders, Wit, Hayton and Anderson

Delivered by

The Honourable Mr Justice Nelson

on the 10th day of April 2014

- [1] The first Respondent, Mrs. Georgia Matute (“Mrs. Matute”), has three children; one of them, Janae, born on December 20, 2000 by caesarean section, is afflicted by cerebral palsy which was caused by medical error. Janae is the second Respondent in this appeal and defends the appeal by her next friend, her mother.
- [2] Mrs. Matute and Janae sued both the Appellant, Dr. Raju Meenavalli (hereinafter “Dr. Raju”), and the Attorney-General of Belize for medical negligence after Janae was diagnosed with cerebral palsy. Dr. Raju and the Attorney-General in a joint Defence admitted that Dr. Raju was employed by the Western Regional Hospital, Belmopan at all material times and treated and delivered Janae in the course of his employment by the hospital. The admission does not reveal that there was also a doctor-patient relationship between Mrs Matute and Dr. Raju at his private medical clinic, Belmopan Medical Centre.
- [3] Both Dr. Raju and the Attorney-General in their joint Defence vigorously denied negligence. In effect, the Hospital repudiated liability on the part of its servants or agents, Dr. Raju and other hospital staff. The trial judge, Awich J, as he then was, gave judgment against Dr Raju. He held that the claim against the Hospital was time barred, but that decision was reversed in the Court of Appeal. The Court of Appeal’s decision is not challenged by the Attorney-General, with the result that the Hospital bears liability to Mrs. Matute and Janae irrespective of the outcome of this appeal. However, Dr. Raju by way of appeal, vigorously resists the findings of fact of the courts below. This Court dismisses Dr. Raju’s appeal for the reasons stated below.

Appeals on questions of fact

- [4] It would be well to preface this judgment with a reminder of the restricted role of courts of appeal with regard to findings of fact. The principle was laid down by Viscount Simonds in *Benmax v Austin Motor Co. Ltd.*¹

¹ [1955] AC 370 (HL) 374.

... I have found, on the one hand, universal reluctance to reject a finding of specific fact, particularly where the finding could be founded on the credibility or bearing of a witness, and on the other hand, no less a willingness to form an independent opinion about the proper inference of fact, subject only to the weight which, should, as a matter of course, be given to the opinion of the learned judge ...

[5] In the recent decision of *Ramlagan v Narine Singh*², this Court said:

Although in *Lachana v Arjune*³, this Court opted for flexibility with regard to concurrent findings of fact in the courts below, generally only in exceptional circumstances would it review concurrent findings of fact of the courts below.

These principles are also applicable in medical negligence cases.

The factual background

[6] Mrs. Matute and Janae commenced proceedings on January 3, 2003 against Dr. Raju and the Attorney-General of Belize in negligence. Witnesses for Mrs. Matute and Janae were Mrs. Matute, Dr. Martinez Salinas, a paediatrician and Dr. Egbert Grinage, a paediatrician. Witnesses for Dr. Raju and the State were Dr. Raju, an obstetrician and gynaecologist and Dr. Magana, a paediatrician and Chief of Staff of the Western Regional Hospital.

[7] Awich J. gave judgment on liability in favour of Mrs. Matute and Janae on March 5, 2010 but dismissed the claim against the Attorney-General. Damages were assessed in October 2010. The Court of Appeal heard an appeal and cross-appeal against the orders of Awich J. and in March 2012 dismissed the appeal and allowed a cross-appeal against dismissal of the claim against the Attorney-General.

[8] The factual matrix upon which this appeal rests began on June 9, 2000, when Mrs. Matute did a home pregnancy test on her birthday and discovered she was pregnant. She attended Dr. Raju's clinic at the Western Regional Hospital. She

² [2014] CCJ 5 (AJ).

³ [2008] CCJ 12 (AJ).

informed him that the first day of her last menstrual period (LMP) occurred on April 27, 2000. She had experienced no period in May 2000.

- [9] Dr. Raju examined Mrs. Matute and declared that she was three months pregnant and recorded an LMP of March 27, 2000 instead of one of April 27 as she had told him. He informed Mrs. Matute that her expected date of confinement was January 2, 2001. He indicated that in December 2000 he would set a date for delivery by C-section since she had previously given birth by caesarean section.
- [10] On a visit to Dr. Raju's private clinic on August 3, 2000, Dr. Raju noted on the Antenatal Card an estimated date of delivery of January 3, 2001, which corresponded with an LMP of March 27, 2000. Mrs. Matute sought a second opinion at La Loma Luz Hospital and Clinic where she was physically examined and underwent an ultrasound examination of the foetus. La Loma Luz Hospital gave Mrs. Matute a report with pictures of the foetus dated October 13, 2000. The La Loma Luz Report confirmed the April 27 LMP Mrs. Matute had given Dr. Raju. It further noted the expected date of confinement as February 1, 2001 and the gestational age of the foetus as 24 weeks.
- [11] Mrs. Matute took the La Loma Luz Report with her when she paid the next visit to Dr. Raju's private clinic on November 1, 2000. Dr. Raju was angry that she had obtained such a report and dismissed its contents as "nonsense" and pushed the Report back to Mrs. Matute. On the same day, November 1, 2000 he completed Mrs. Matute's Social Security Board's Medical Certificate of Expected Confinement, certifying that date to be January 3, 2001. On November 1, 2000 Dr. Raju also noted on Mrs. Matute's Antenatal Card a gestational age of the foetus as 26 weeks.
- [12] On Mrs. Matute's fourth antenatal visit on November 30, 2000, her Clinical Card recorded a gestational age of 34 weeks 1 day, whereas Dr. Raju's clinical notes recorded a gestational age of 35 weeks 1 day. On this visit, Dr. Raju cancelled the gestational age of 26 weeks noted on Mrs. Matute's Antenatal Card and substituted 31 weeks.

- [13] On Mrs. Matute's next visit on December 7, 2000, Dr. Raju recorded a gestational age of 35 weeks on the Antenatal Card and 36 weeks in his handwritten. On December 17, 2000, Dr. Raju noted on the Antenatal Card that the gestational age of the foetus was 37.3 weeks. The same figure was recorded in his handwritten notes. On that visit, it was agreed that Mrs. Matute would be admitted to the Western Regional Hospital on December 19, 2000 and she would then be prepared for delivery by C-section on December 20, 2000. Mrs. Matute was admitted to the Hospital's Maternity Ward on December 19, 2000. On December 20, 2000, Mrs. Matute was put under anaesthesia and operated upon by Dr. Raju.
- [14] On December 21, 2000, Mrs. Matute saw the baby, Janae, in an incubator with an oxygen tube inserted into her stomach. She observed that Janae's breathing was very fast as if she were gasping for breath. Janae was then under the care of Dr. Magana, a paediatrician, who gave evidence for Dr. Raju and the Hospital. Upon inquiring of Dr. Magana what was wrong with Janae, Dr. Magana merely offered that: "The baby was born premature". Janae was discharged after a week, but had to be rushed back to hospital on December 29, 2000.
- [15] After Janae's first birthday, Mrs. Matute visited Dr. Magana and sought an explanation of what happened during delivery. He indicated to Mrs. Matute that he "suspected Janae may have suffered brain damage due to lack of oxygen at birth".
- [16] Dr. Magana gave Mrs. Matute a report dated January 29, 2002 by way of referral to doctors in New York. Dr. Magana's conclusions were:
- (i) "Preterm of 36 weeks
 - (ii) Moderate asphyxia
 - (iii) Hyaline membrane
 - (iv) Hyperbilirubineuria due to ABO conflict
 - (v) Neonatal sepsis"

Dr. Magana added that owing to manipulation during resuscitation, he decided to commence antibiotic treatment on December 21, 2000 with ampicillin.

[17] On February 27, 2002 Mrs. Matute took Janae to be examined by Dr. Marco Mendez, a general neurology paediatrician from Guatemala at the Belize Diagnostic Centre in Belize City. Dr. Mendez reported:

A digital ... brain mapping was performed on Janae Matute who presents slow neurodevelopment. She presented asphyxia with Apgar 3, 5 and 7. She is not able to stand or seat (sic). Slow neurodevelopment cerebral palsy seizure...

[18] Mrs. Matute in May 2002 took Janae for a further examination in New York, where Dr. Romaine Schubert, a paediatric neurologist, diagnosed the following conditions in Janae:

- (i) “severe global developmental delay;
- (ii) spastic diaperesis;
- (iii) alternating esotropia; and
- (iv) perinatal asphyxia”

[19] In August 2002 after her return to Belize City, Mrs. Matute obtained a referral letter from Dr. Egbert Grinage, specialist at Universal Health Services for Shriner’s Hospitals for Children in the U.S.A. Dr. Grinage’s referral form diagnosed Janae as suffering from:

- (i) “cerebral palsy;
- (ii) spastic diaperesis;
- (iii) alternating esotropia of eyes”

[20] Dr. Grinage in a letter to the Ministry of Health dated October 21, 2002 said: “Her medical problems are due to severe lack of oxygen to the brain at birth and “septicaemia (infection) at birth”. It is to be noted that Dr. Grinage said in oral

evidence that the main cause of Janae's condition was "more severe lack of oxygen to the brain than anything else. And probably a little input of septicaemia. The main cause to my knowledge would seem to be severe lack of oxygen as in most cases."

[21] Against this factual background, Dr. Raju in his joint Defence with the Hospital (which does not contest the claims of Mrs. Matute and Janae) denies negligence. At paragraph (ii) of the Particulars he pleads:

(ii) On 7th December, 2000, the Plaintiff was still complaining of cramps and taking into consideration the Plaintiff's history of childbirths, a date for C-section was discussed and set at 20th December, 2000, by which time the Plaintiff was expected to have 36.6 weeks of pregnancy.

[22] By December 20, 2000, according to the La Loma Luz Report, disdainfully rejected by Dr. Raju, and the Weekly Pregnancy Calculator based on Mrs. Matute's LMP of April 27, 2000, she would have been 34 weeks pregnant and not 36.6 weeks as pleaded in the Defence.

The issues on this appeal

[23] Mr. Godfrey Smith S.C., counsel for Dr. Raju, seemed aware of the limitations of an appeal against concurrent findings of fact in the courts below. He summarized his grounds of appeal thus:

- (1) there was no breach of Dr. Raju's professional duty of care to the Respondents and
- (2) the causal connection between the alleged breach of duty and damage required by the law of medical negligence was not established.⁴

In other words, this Court was invited to say that there were multiple causes for Janae's condition and that since the conventional 'but for' test could not apply no

⁴ See *Fairchild v Glenhaven Funeral Services Ltd.* [2003] 1 AC 32 at [8] where Lord Bingham of Cornhill set out the four constituent elements of a negligence claim.

liability could be imposed on Dr. Raju in negligence. At first blush these issues of causation and standard of care are issues of law. However, such issues will only fall to be determined if the findings of fact of the trial judge and the Court of Appeal on causation and standard of care can be reversed by this Court in consonance with the principles set out earlier in this judgment.

Causation

- [24] Counsel for Dr. Raju did not dispute that Janae suffered cerebral palsy. He submitted that “the totality of the medical evidence before the trial judge was that oxygen deprivation (sometimes described as asphyxia) and septicaemia (infection) led to cerebral palsy.” He contended that the break in the chain of causation came in determining what exactly caused the asphyxia.
- [25] There was ample evidence before the learned judge and the Court of Appeal on the issue of causation as noted by Mendes JA in his very careful judgment at [24]:

Although Mr. Smith relied on the many alternative causes of oxygen deprivation identified by Dr. Martinez and Dr. Grinage as casting doubt on the trial judge’s finding, he did not submit that Dr. Meenavalli’s case was that Janae in fact suffered oxygen deprivation in utero or during birth ... Accordingly, that left Dr. Magana’s unchallenged evidence that Janae’s condition was caused by her delivery pre-term, an assessment which Dr. Meenavalli expressly accepted. In the circumstances, I am unable to find any basis upon which the judge’s findings on causation can be challenged...

- [26] Dr. Magana, the Appellant’s witness, in his report dated January 29, 2002 spelled out his conclusions on the causes of Janae’s cerebral palsy. These included premature birth at 36 weeks, moderate asphyxia, hyaline membrane disease and neo-natal sepsis. He explained that owing to manipulation during resuscitation he decided to begin antibiotic treatment. Dr. Grinage in his letter to the Ministry of Health stated that the medical problems of Janae are due to severe lack of oxygen to the brain at birth and “septicaemia (infection)”.

- [27] Based on this evidence, a court of law could properly accept that evidence and find that on a balance of probability, Janae's condition was due to a pre-term delivery (on the facts at 34 weeks) causing the onset of hyaline membrane disease at birth in a situation in which there was a lack of personnel and equipment for her survival without brain damage. Counsel for Mrs. Matute submitted, correctly in our view, that: "If Janae did not develop Hyaline Membrane Disease, there would not have been resuscitation and exposure to sepsis".
- [28] According to the evidence, hyaline membrane disease is a respiratory distress syndrome caused by undeveloped lungs and is common in pre-term babies. The evidence also indicates that the risk of hyaline membrane disease in a controlled environment is typically reduced by the administration of corticosteroids at weeks 32 to 36 which would hasten maturation of the lungs. There was no evidence that such treatment was administered even though the caesarean section on Mrs. Matute was planned from her very first visit to Dr Raju.
- [29] Further, at Janae's birth there was no paediatrician immediately available to reverse Janae's oxygen deprivation. Dr. Magana estimated that he only arrived at the delivery room some five to seven minutes after the birth and after an attempt to resuscitate her, which exposed her to septicaemia.⁵
- [30] The learned judge and the Court of Appeal did not find, as counsel for the appellant urges us to do now, that there were multiple causes of Janae's cerebral palsy or that there were one or more of an indeterminate class of persons who were responsible for Janae's condition. The facts of this case are far removed from *Wilsher v Essex Health Authority*.⁶ There a premature baby developed retrolental fibroplasia, an incurable condition of the retina, which caused total blindness in one eye and impaired vision in the other. The baby had been administered excess oxygen when a monitor had been inserted in its vein instead of through the umbilical artery. It was not clear what had caused the baby's

⁵ See [4] of the judgment of the Court of Appeal .

⁶ [1988] AC 1074 (HL).

condition, excess oxygen being one only of the possible causes. The House of Lords on those facts imposed no liability on the Hospital Authority.

[31] In this appeal a similar conclusion does not follow given the state of the evidence. Despite robust advocacy on the part of Mr Smith SC on behalf of Dr Raju, we remain unconvinced that the findings of fact made by the lower courts ought to be disturbed. It follows that this ground of appeal fails.

Standard of care

[32] It was not immediately clear that counsel for Dr. Raju was contesting the finding by Mendes JA, with which Sosa P and Morrison JA agreed, that the evidence suggested strongly that “Dr. Meenavalli erred in his calculation of the gestation age and that the trial judge’s finding that Janae was between 34 to 36 weeks at birth was most likely correct”.

[33] It appears that counsel was prepared to make the concession that the miscalculation led to Janae’s premature delivery with hyaline membrane disease thus causing cerebral palsy, only for the purpose of making good the point that Dr. Raju could not be held liable unless it could be shown that his action or error did not meet the standard of care applicable to a medical doctor practising in the specialism of obstetrics and gynaecology. This same argument was advanced in the Court of Appeal and dismissed.

[34] The classic statement of the standard of care of a professional exercising some special skill or competence is contained in the direction of McNair J in *Bolam v Friern Hospital Management Committee*⁷ which was cited with approval by Sir Hugh Wooding in *Chin Keow v Government of Malaysia*⁸:

... where you get a situation which involves the use of some special skill or competence, ... the test ... is the standard of the ordinary skilled man

⁷ [1957] 2 All ER 118, 121.

⁸ [1967] 1 WLR 813, 816.

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

[35] Medical negligence therefore means the “failure to act in accordance with the standards of reasonably competent medical men at the time”.⁹ Thus, a doctor is not liable for medical negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art.¹⁰

[36] In the context of this case, the only obstetrician to give evidence was Dr. Raju himself. He gave evidence that a pregnant woman’s LMP was an important indicator and that consideration should be given to all the available evidence in determining the expected date of confinement. His testimony was that even though some women might be unsure or make mistakes about their LMP, it was in accordance with international practice to record the LMP given by the patient for future reference. Dr. Raju in evidence emphasized that the core findings must be recorded as is and then correlated “as you go along”. He considered that to be common sense.

[37] Accordingly, there was specialist evidence from Dr. Raju of the proper practice in relation to the LMP given by the patient. Mendes JA therefore rightly concluded that Dr. Raju:

failed to follow the procedure which he himself sanctioned as the proper practice for an obstetrician. Thus he failed to record Mrs. Matute’s LMP accurately, and he failed to take account of the La Loma ultrasound of the pregnancy ... In doing so, he misled himself when he came to assess Mrs. Matute’s case in the closing stages of the pregnancy and to decide on the most appropriate date of delivery.¹¹

⁹ See per McNair J in *Bolam* (supra) 120.

¹⁰ Per McNair J in *Bolam* (supra) 121.

¹¹ See [63] of the Court of Appeal judgment.

[38] In any event, it must be noted that the *Bolam* test (*supra*) sets special but higher standards for those who profess specialism. *Non constat* that specialists do not also owe an ordinary duty of skill and care applicable to general practitioners e.g. to record and consider relevant information supplied to them by patients.

[39] In *Whitehouse v Jordan*¹² Lord Edmund-Davies said:

To say that a surgeon committed an error of clinical judgment is wholly ambiguous, for, while some such errors may be completely consistent with the due exercise of professional skill, other acts or omissions in the course of exercising 'clinical judgment' may be so glaringly below proper standards as to make a finding of negligence inevitable.

[40] In the instant appeal, the courts below might easily have found that the error of Dr. Raju in disregarding his patient's information and so miscalculating the gestation age of the foetus fell so far below proper standards applicable to medical doctors generally, as to be in breach of the common standard of care applicable to medical practitioners.

[41] In the result, the Court rejects the submissions of counsel for Dr. Raju on the issue of standard of care since Dr. Raju's medical error in calculating the gestational age of Janae was not only a breach of the common standard of care applicable to medical practitioners but also of the standard of care applicable to specialists in the field of obstetrics and gynaecology.

Conclusion

[42] For the reasons stated, there was abundant evidence upon which the trial judge and the Court of Appeal could have arrived at the findings of fact they made and the case does in any way not fall within the exceptional circumstances which would allow this Court to overturn concurrent findings of fact of the courts below as we stated in *Ramlagan v Narine Singh*.

¹² [1981] 1 All ER 267, 276.

[43] In view of the conclusions we have arrived at on the facts, we have deprived ourselves of expressing a view on the usefulness of the ‘but for’ or *conditio sine qua non* test of causation where there are multiple causes or a class of persons with an indeterminate tortfeasor. We leave those considerations for another day since, in our view, they do not arise in this case, contrary to the contentions of counsel for Dr. Raju.

[44] Accordingly, the appeal of the Appellant is dismissed with costs to be paid by the Appellant. We note that the Attorney General did not appear in these proceedings and is therefore neither entitled to an award of costs nor liable to have any order for costs made against him, despite belated contentions of Mr Smith SC to the contrary.

The Hon Mr Justice Nelson

The Hon Mr Justice Saunders

The Hon Mr Justice Wit

The Hon Mr Justice Hayton

The Hon Mr Justice Anderson