

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2008/0268

BETWEEN:

GOVIN SINGH

Claimant

and

ATTORNEY GENERAL

1st Defendant

DR. P. KELVIN CHARLES

2nd Defendant

Appearances:

Mr. Hugh Marshall Jr. for the Claimant

Ms. Bridget Nelson for the First Named Defendant

Messrs Kelvin John, Loy Weste and Lisa Weste for the Second Named Defendant

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2010: November 2, 3, 4

2011: April 20
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JUDGMENT

[1] **MICHEL, J.:** By Claim Form filed on 30th April 2008 the Claimant, Govin Singh, claimed against the Defendants, the Attorney General and Dr. P. Kelvin Charles, the following relief:

1. Damages for negligent diagnosis and negligent medical care received at the Holberton Hospital during the period 15th April through 24th April 2007, both days inclusive;
2. Damages for the negligent misstatements of one Dr. Charles, the attending Surgeon of the Claimant as a patient of the Holberton Hospital during the period 15th April through 24th April 2007, both days inclusive;
3. Any further relief the Court deems appropriate.

[2] By his Statement of Claim filed on the same 30th April 2008, the Claimant averred that the First Named Defendant is sued by reason of the Crown Proceedings Act for the negligent actions of the Superintendent of Holberton Hospital, its nurses, doctors and staff generally, with respect to the negligent management of the care of the Claimant during the period 15th April 2007 to 24th April 2007 and the Second Named Defendant is sued for his negligent treatment, diagnosis and management of, as well as his negligent misstatements in relation to, the medical care of the Claimant during the period 17th April 2007 to 24th April 2007 whilst the Claimant was a patient at the Holberton Hospital under his care as a Consultant Surgeon.

[3] In his aforesaid Statement of Claim, the Claimant claimed the following relief:

1. Special damages in the amount of \$327,604.10;
2. Damages generally, to include punitive, to be assessed;
3. Exemplary damages for the oppressive and arbitrary conduct of the Defendants;
4. Interest thereon pursuant to the Supreme Court Act;
5. Costs.

[4] By an Order made by the Master on 16th July 2008 the time for the filing of Defences by the Defendants was extended to the 1st day of September 2008. Both Defendants filed Defences on 1st September 2008 joining issue with the Claimant on his claim and denying negligence on their part.

- [5] By an Order made by the Master on 17th March 2009 it was ordered by consent that Professor the Honourable Errol Walrond be appointed as an expert pursuant to Part 32 of the Civil Procedure Rules 2000 (the CPR) and that the parties shall jointly instruct him and provide him with a copy of Part 32 of the CPR. The Expert Report by Professor Errol Ricardo Walrond was filed on 11th December 2009.
- [6] In accordance with the case management directions given in this matter and extensions of time granted, all three parties in due course filed their lists of documents, witness statements, listing questionnaires and pre trial memoranda and a three-volume trial bundle was filed by the Claimant on 28th October 2010.
- [7] There were several interlocutory skirmishes between the parties, with the last of them resulting in a ruling by the Court on the first day of the trial that certain parts of the witness statements of the Claimant and his two witnesses, Dr. Joseph John and Mr. Rajesh Balooja, be struck out. The trial then proceeded on 2nd, 3rd and 4th November 2010.
- [8] At the trial, evidence was given for the Claimant by Dr. Joseph John, by the Claimant himself and by Rajesh Balooja; evidence was given for the First Named Defendant by Loislyn Destin, Valerie Williams, Dr. Linda Lovell-Roberts, Ruth Hazlewood, Marla Morris, Dr. Cleofoster Beazer and Dr. Syamal Sen; evidence was given by the Second Named Defendant on his own behalf; and the expert witness, Professor Errol Walrond, gave evidence as the Court-appointed expert.
- [9] At the conclusion of the trial, the parties were given until 16th December 2010 to file and exchange closing submissions with authorities, with both the First and Second Named Defendants filing their closing submissions with authorities on that date. The Claimant filed his closing submissions with authorities on 27th January 2011, having sought and obtained an extension of time until 17th January 2011 to file and serve them. The Court, however, accepts the closing submissions and authorities filed on behalf of the Claimant and deems them to have been properly filed.

[10] Briefly stated, the facts of this case are that the Claimant, who was twenty-two years old at the time, was injured in a water sports accident on 15th April 2007, as a result of which he was taken to the Holberton Hospital where he was treated at the casualty department, then admitted to the surgical ward where he was seen by Dr. Charles (the Second Named Defendant) and other members of the surgical team at the hospital on the afternoon of 16th April. Then on 17th April he was operated on by Dr. Charles as a result of a finding by Dr. Charles of the presence of fluids in his stomach. He was afterwards transferred to the Intensive Care Unit at the hospital and then returned to the surgical ward a few days later. When after a few more days the Claimant appeared not to be improving, Dr. Charles discussed with him and his family the need for him to receive overseas medical attention, with the result that on 24th April 2007 the Claimant travelled to Trinidad on a referral by Dr. Charles to Professor Vijay Naraynsingh of Medical Associates in Trinidad. He underwent further surgery in Trinidad and received further treatment there until his return to Antigua on 7th May. Upon his return from Trinidad, the Claimant opted not to resume treatment of his condition at Holberton Hospital, but instead to place himself under the care of Dr. Joseph John of Medical Surgical Associates in Antigua, who performed further surgery on him. In April 2008 the Claimant commenced this suit against the First Named Defendant as the representative of the Crown, which owns Holberton Hospital, and against the Second Named Defendant, under whose management he was at Holberton Hospital, alleging negligence in the diagnosis, care and treatment of his injuries at the Holberton Hospital and claiming special and general damages.

[11] In his Statement of Claim, the Claimant particularized the negligence of the First Named Defendant as follows:

1. In the course of the operation -

- (a) failing to administer or to properly administer anesthesia;
- (b) failing to produce a surgeon with trauma knowledge or experience;
- (c) failing to ensure that the Kocher Maneuver was applied;
- (d) failing to refer the Claimant to a competent trauma surgeon.

2. Post operation –

- (a) failing to recognize that bile emanating from the Claimant's stomach came from a digestive organ such as duodenum, colon or bowel;
- (b) failing to provide a physician with adequate ability to diagnose the injury of the Claimant or to refer the Claimant to such a physician.

3. Generally –

- (a) failing to provide good and sufficient treatment to a trauma victim;
- (b) failing to provide good and sufficient treatment during surgery of a trauma victim;
- (c) failing to provide good and sufficient treatment post-operative to a patient;
- (d) failing to investigate or properly investigate the causes of the trauma victim's pain;
- (e) failing to properly read the results of blood and analysis test;
- (f) failing to refer competent medical practitioners to a trauma case.

[12] The Claimant particularized the negligence of the Second Named Defendant as follows:

1. In the course of the operation –

- (a) failure to recognize the importance of the elevated blood levels of bilirubin and white cells;
- (b) failure to explore the digestive organs, in particular, to mobilize the duodenum and to examine the bowel;
- (c) failure to carry out standard and normal trauma surgical evaluations and, in particular, the Kocher Maneuver;
- (d) operating on the Claimant's pancreas when in fact nothing was wrong with his pancreas.

2. Post operation –

- (a) failing to pay any regard or any sufficient regard to the history of the Claimant;
- (b) failing to diagnose or to properly diagnose the reason for bile to be draining from the Claimant's stomach;
- (c) failing to investigate or to properly investigate the reasons or causes for the Claimant's pain, inability to digest food, stomach infection and emission of bile from his stomach;
- (d) failing to refer the Claimant to a consultant trauma surgeon.

3. Generally –

- (a) failing to investigate or properly investigate the cause of pain, given the history of trauma;
- (b) failing to read or to properly read the results of blood and analysis test;
- (c) failing to carry out a sufficient investigation into the fluids in the Claimant's stomach;
- (d) failing to refer the Claimant to a surgeon experienced or trained in trauma;
- (e) misleading the Claimant as to his diagnoses;
- (f) misleading the Claimant as to the availability of medical assistance in Antigua and Barbuda.

[13] The Claimant led evidence in support of his allegations and the Defendants - who had denied the allegations in their Defences filed in the matter - led evidence in contradiction of the Claimant's allegations. In most cases, after the averment by the claimant and the joinder of issue by the defendant and the receipt of evidence in support of each side, it would then be for the Court to choose whose evidence it accepts and whose it rejects. In this particular case, however, there is an additional factor which by and large points the way for the Court to determine whose evidence it accepts and whose it rejects and guides it in the determination of the claims made by the Claimant and traversed by the Defendant. This additional factor is of course the detailed report and the uncontroverted evidence of the expert appointed by the Court, with the consent of all three parties to the suit.

[14] The Claimant alleges negligence by the Defendants in the diagnosis of his injuries, the Defendants deny negligence and the Court-appointed expert says (at page 14 paragraph vii of his report) that "the diagnosis of acute pancreatitis made by the 2nd defendant was entirely reasonable" and (at page 26 paragraph xx) that "Dr. Charles and his team carried out appropriate investigations in reaching the initial diagnosis." These unchallenged statements of Professor Walrond, which were reasoned and explained in his report forming part of the evidence in this case, points the way for the Court and enables it to feel satisfied (on a balance of probabilities) that the Second Named Defendant as Consultant Surgeon and the First Named Defendant as his employer were not negligent in the diagnosis of the Claimant.

[15] The Claimant alleges negligence by the Defendants in the care of the Claimant, the Defendant denies negligence and the Court-appointed expert says (at page 25 paragraph xviii) that "The Holberton Hospital can only act through its agents, the staff [and] from the documentation submitted the doctors involved in the care of the Claimant took all reasonable steps to discover what was wrong with the patient," then (at page 25 paragraph xvii) that "The second defendant in my opinion exhibited the standard of care and skill expected of the ordinarily competent surgeon" and further still (at page 29 paragraph xxii) that "the Holberton Hospital and its staff managed the patient promptly, [t]he patient was appropriately investigated and action taken expeditiously when fluid was demonstrated in the abdomen, [a]t surgery appropriate action was taken given the abnormalities described, which were indicative of pancreatitis." These unchallenged statements by Professor Walrond, reasoned and explained in his report, points the way for the court and enables it to feel satisfied (on a balance of probabilities) that the Defendants were not negligent in the care of the Claimant at the Holberton Hospital.

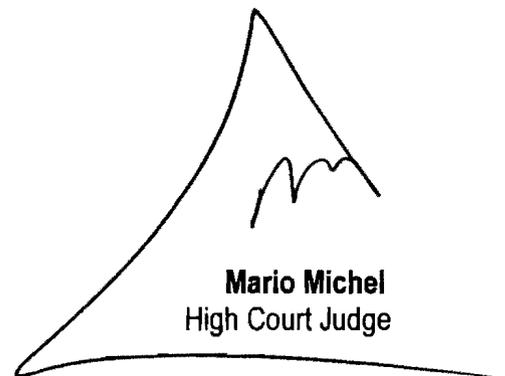
[16] The Claimant alleges negligence by the Defendants in the treatment of the Claimant, the Defendants deny negligence and the Court-appointed expert says (at pages 9 & 10 paragraph iv) that given the limitations of a hospital "in an island with a small population where personnel are unlikely to be familiar with the management of rare and difficult

conditions ... the patient had a standard of care that could be expected in these circumstances ... the standard of care appears to have been within the knowledge and skill of those who were available to treat the patient in an emergency situation with what turned out to be a rare injury to the duodenum as well as the pancreas." Professor Walrond also said (at page 13 paragraph v) that "I did not find any clear evidence in the documents submitted of unacceptable medical practice." Although he went on to say thereafter that "The operation note is written by the surgeon's assistant and no mention is made of inspecting the bowel at the operation on the 17th April [and that] if this is not an omission and the bowel was not indeed inspected this would have been unacceptable," but he also said (at page 11 paragraph iv) that "It would be unlikely that the extensive inspection done by a surgeon of everything else would not have included the bowel" and (at page 29 paragraph xxii) that "The operation note is deficient in not making specific mention of looking at the bowel, but given all else that was said to have been inspected it seems unlikely that the bowel was not inspected." Professor Walrond also said (at page 26 paragraph xxi) that "In spite of gaps in the records of the patient's care, from the documentation submitted it appears that Dr. Charles treated the patient within accepted standards of care." Again, these unchallenged statements by Professor Walrond, reasoned and explained in his report, point the way to the Court and enable it to feel satisfied (on a balance of probabilities) that the Defendants were not negligent in the treatment of the Claimant at the Holberton Hospital.

- [17] On the issue of the referral of the Claimant to Professor Naraynsingh which, at it turned out, brought an end to the diagnosis, care and treatment of the Claimant by the Defendants, Professor Walrond said (at page 28 paragraph xxi) that "An upper small bowel fistula in these circumstances is a rare and difficult condition to treat and may not be seen by the ordinary surgeon practising in an island with a small population [and] it is therefore prudent of such a surgeon to seek help with the treatment of the patient wherever the surgeon thinks that the patient can best be served." This was, in fact, the course of action taken by the Second Named Defendant as an employee of the First Named Defendant in referring the Claimant for treatment by Professor Naraynsingh.

[18] After all of my extensive reading on medical law and medical negligence and of the authorities submitted by the parties to this case, in the end it came down to this – that on the evidence led in the course of the three-day trial, on the documents admitted into evidence and, more particularly, on the report of Professor Walrond and on his oral testimony, this Court is satisfied on a balance of probabilities that the Claimant was not negligently diagnosed, cared for and treated at the Holberton Hospital whilst he was a patient there between and including the 15th to the 24th April 2007. At the very least, the Court is not satisfied on a balance of probabilities that the First Named Defendant and/or the Second Named Defendant were negligent in the diagnosis, care and management of the Claimant.

[19] The Court therefore dismisses the Claimant's claim with costs to both the First and Second Named Defendants to be agreed or otherwise assessed. In agreeing or assessing costs, the plight of the Claimant in sustaining serious injury resulting from the accident of 15th April 2007 and in having to undergo an apparently long, difficult and expensive course of treatment should be kept in focus and, though his weaponry appeared to have been misdirected at the First and Second Named Defendants, it may not have been entirely unreasonable for him to have sought compensation for the losses which he must have incurred in the process.



Mario Michel
High Court Judge