2006 N0. 141 BERBICE

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

(CIVIL JURISDICTION)

BETWEEN:

1. CLIFTON AUGUSTUS CRAWFORD, substituted by second named plaintiff by order of Court dated 14th September 2011
2. MARIAM VICTORIA CRAWFORD, in their individual capacities and as the administrators of the estate of DEBORAH ANITA CRAWFORD (Deceased) by virtue of order of Court dated the 26th day of September 2006 and made in cause No. 206 of 2006 (Berbice).

Plaintiffs

-and-

1. THE ATTORNEY GENERAL OF GUYANA
2. NARINEDAT SOOKNANDAN

Mr.M. Bacchus for the plaintiffs

Mr. N. Harnanan for the first named defendant

Ms. J. Ali for the second named defendant

DECISION

The plaintiffs filed a writ of summons on the 4th October 2006 claiming against the defendants damages jointly and severally for negligence committed by the first named defendant and the second named defendant, servant or agent of the first named defendant, on the 13th October, 2003 at the New Amsterdam Public Hospital, resulting in the death of DEBORAH ANITA CRAWFORD occasioning loss and damage to the plaintiffs and the other heirs and dependants of the said deceased. The plaintiffs also claim costs.

In their statement of claim the plaintiffs allege that on the 13th October 2003 and at all material times the second named defendant was a Maternity consultant Doctor employed and engaged by and was a servant or agent of the State. The plaintiffs also claim that on the 13th October 2003 the second named defendant was a doctor employed by or in the service of the Minister of Health of Guyana as a Consultant and attached to the New Amsterdam Public Hospital ran and operated by the Government of Guyana. The plaintiffs further claim that on the 12th October 2003 the deceased was admitted as a maternity patient at the New Amsterdam Public Hospital to deliver a child. The attending physician was the second named defendant and also in attendance were nurses employed by the State at that Hospital.

The plaintiffs claim that due to the negligence of the second named defendant and/or that of the attending nurses the deceased and the child died at that institution on the 13th October 2003.

The plaintiffs in their statement of claim allege negligence by the first and second defendants and/or the attending nurses as follows:-

(a) Failing to take into consideration, in administering treatment, of the fact that the deceased was a known diabetic.

(b) Failing to do a blood test.

(c) Failure to appreciate the danger attending a high risk patient.

(d) Administering too high a dose of Cytotex.

(e) Failure of the second named defendant to personally attend the deceased at a crucial time.

(f) Failure to follow up properly monitoring the deceased after the Cytotex was administered.

(g) Performing a hysterectomy un-necessarily and negligently.

(h) Failure to provide blood for the deceased.

(i) Administering fundal pressure un-necessarily and negligently.

(j) Failure to take any or any adequate steps or proper precautions to avoid excessive bleeding.

(k) Positively and negligently causing excessive bleeding.

The plaintiffs also claim the following:-

(a) Funeral, traveling and related expenses of $750,000 and

(b) Damages in excess of $50,000.

In their defence the first named defendants denied the plaintiffs' claims as set out in their statement of claim and specifically denied that there was any negligence on the part of the second named defendant and or the attending nurses on the 13th October 2003 or any date whatsoever.

In his defence the second named defendant denied that he was negligent as alleged or at all or that the deceased and the child died by the matters alleged in the particulars of claim. The second named defendant claims that he provided the best duty of care and treatment possible given the available facilities at the Hospital and went beyond and above the call of duty.

The evidence of the first witness Mariam Crawford, the second named plaintiff, is that the deceased, Anita Crawford, was a hard worker who was employed as a cosmetologist and also did welding. She also stated that her daughter was aware that she was experiencing a high risk pregnancy, but continued to work in the aforementioned strenuous jobs, up until the day before she was admitted to the hospital to give birth. She testified that the deceased developed diabetes during the pregnancy. Exhibit D shows that the deceased had three previous abortions and two spontaneous abortions. The witness also testified that the deceased told her that she had surgery at about 3 months into her pregnancy, which the hospital was not aware of.

Two other witnesses were called – Gloria Beharry and Leslie Cadogan, who only tendered exhibit D, the medical charts of the deceased. There is no evidence from the charts that the cause of death of the deceased was due to negligence of the second-named defendant.

DR. Galton Roberts was the main witness for the plaintiffs' case. His evidence did nothing to support the plaintiffs' case . The evidence from this witness was his response to a question posed by Counsel for the plaintiff whether the documents ie Exhibit D reveal that the death was caused by the negligence of the Doctor (ie the second named defendant) and he responded "**Based on exhibit D it is impossible for me to say whether there was any negligence in the death of the deceased."**

Dr. Roberts in his testimony, under cross examination, clearly stated "I never saw the patient – I can't say what caused the bleeding." He said he was asked to prepare a report for the Medical Council in relation to a complaint which was made in relation to the death of Anita Crawford.

Dr. Roberts wrote a report (Exhibit E) and testified that the purpose of the document was to give his opinion of what happened with the deceased and what may have caused the demise of the patient. The witness testified as follows:

1. He could not remember all the bits of documents which were given to him by the Medical Council on which he based his report. However he saw the medical chart.
2. The medical chart proved a real challenge to him, he could not comprehend the notes and the handwriting, yet he went ahead and made findings on it.
3. Before writing his report, he admitted he did not interview the second named defendant Dr. Sooknandan.
4. He did not interview the nurses from the New Amsterdam Hospital.
5. He did not interview the pathologist who gave the cause of death.
6. He did not interview anyone from the gynecological section of the hospital.
7. He did not interview the relatives of the deceased,
8. He never saw the patient.
9. He further testified that from the notes he was given, there was no indication that the patient would suffer post partum haemorrhage or haemorrhagic shock, and based on the information he received he would conclude that the deceased patient suffered from haemorrhagic shock.

The witness further testified that when he prepared his report, he had no evidence that the deceased suffered from diabetes. He said he asked the Medical Council for the Skeldon Estate clinic card but he did not get it.

Having admitted the shortcomings in preparing this report, coupled with his inability to recollect the circumstances in this case, DR. Roberts was forced to

speculate and make inferences from what was suggested to him in cross examination by counsel for the second named defendant.

In cross examination the witness further testified that he recognized the words "Dr. Sooknandan" on page 3 of the Medical Chart, but he did not know if it was the signature of Dr. Sooknandan, and he did not bother to enquire from anyone whether it was the signature of Dr. Sooknandan before he wrote in his medical report that "the signature of the medical officer is absent."

He further testified that he could not identify the signature on page 1 of the medical chart. He testified that he sought clarification from the Medical Council as to whether the medical chart had any signature on page 1 and as a result, he was satisfied that his findings that "the signature of the medical officer is absent" was correct.

A signature was shown to the witness on the bottom of page 1 and an initial on the right bottom of page 1 of the medical chart and he said he could not identify the writing. Yet the witness testified that his finding "the signature of the medical officer is absent " was correct.

The witness testified that he did not know that the initials "HRC" at top left hand corner of page one of the medical chart meant High Risk Clinic.

Furthermore, the plaintiffs have failed to establish any of the particulars stated in paragraph 9 of their statement of claim.

There was no reliable medical evidence by or on behalf of the plaintiffs that the deceased was a known diabetic. The witness Dr. Roberts testified that when he

wrote the report, he had no evidence that the patient suffered from diabetes. The medical chart also did not disclose any diagnosis of diabetes.

Negligence in relation to the first named defendant

The major part of the testimony of Dr. Roberts under cross examination bears no relevance to, nor establishes in any way, liability on behalf of the first named defendant for the death of Anita Crawford.

Dr. Roberts never stated in his examination in chief or under cross examination that the first named defendant facilitated or adopted a procedure which was not a recognized and accepted medical practice.

In the case of **Bolam v Friern Hospital Management Committee** (1957) 1WLR 582 it was held that :-

> "A doctor who had acted in accordance with a practice accepted at the time as proper by a responsible body of medical opinion skilled in the particular form of treatment in question was not guilty of negligence merely because there was a body of competent professional opinion which might adopt a different technique."

Barring any admissible evidence of the first named defendant facilitating or performing a procedure which does not have the approval of the medical fraternity this court is constrained to rule that a case has not been made out against the first named defendant. Furthermore in light of the plaintiff's failure to establish the particulars of negligence the plaintiffs have failed to establish their case against the first named defendant and there is no case to answer.

In determining negligence, the test as laid down by Mc Nair J in **Bolam v Friern Hospital Management** at page 586 is as follows:-

> "But where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test 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 circumstances, the plaintiffs have failed to establish that the first named defendant has facilitated, acted or failed to act, as any other doctor would have in similar circumstances.

Negligence on the part of the second named defendant

The plaintiffs have failed to establish that the second defendant facilitated, acted or failed to act, as any other medical practitioner would have done in the circumstances of the New Amsterdam Public Hospital.

In the case of **Hunter v Hanley** (1955) S.L.T. 213 the test for medical negligence was described as follows:-

> "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, if acting with ordinary care."

The medical chart discloses that the patient was seen throughout the pregnancy in the HRC (High Risk Clinic) and Dr. Roberts testified that he did not know

whether in 2003 the New Amsterdam Hospital had a gynecological section. The medical chart revealed that the second named defendant took all necessary precautions with the patient who was at high risk of going into premature labour and possible miscarriage during the early stages of the pregnancy. He personally saw, examined and or treated her on nine occasions prior to the delivery.

There was no evidence that a too high dose of Cytotex was administered. In fact Dr. Roberts testified that there is no prescribed dosage by the manufacturers for the purposes of inducing labour.

The medical chart revealed that the patient suffered from a concealed accidental hemorrhage which caused heavy bleeding. The patient was in a state of Hemorrhagic shock and emergency hysterectomy was done. In fact the witness Dr. Roberts testified that he could not say what caused the bleeding. The medical chart revealed that no blood was immediately available and that one unit became available after approximately 2 ½ hours and that the patient received 3 units of blood. The second named defendant could not be held responsible for the unavailability of blood at the hospital.

The plaintiffs did not give any evidence that fundal pressure was applied by the second named defendant or anyone else. It is therefore clear that the plaintiffs gave no evidence on their particulars of negligence. The evidence of the second named plaintiff was inconsistent and hearsay, the medical report by Dr. Roberts was totally discredited by his own vive voce testimony and the medical chart which was not contradicted in any material way. Heavy bleeding, hemorrhagic shock and disseminated intravascular coagulation were not foreseeable consequences of the delivery.

The evidence of the plaintiffs taken in totality has not satisfied this test on a balance of probabilities.

Res ipsa loquitur

The plaintiffs in their statement of claim raised the doctrine of res ispsa loquitur.

In Walcott v Attorney General (1978) 27 WIR 190 Morgan J stated at page 191-

Counsel for the defendant submitted that there was no case to answer and elected to stand on the following submissions:

(1) There was no evidence of negligence as the plaintiff failed to prove any or all of the particulars of negligence as pleaded in his statement of claim.

(2) That the cause of the occurrence was known hence the dotrine of res ipsa loquitur was not applicable.

His honour went on to state that:

> "…this doctrine does not alter the general principle that the onus of establishing the case rests on the plaintiff. Where, however, the evidence of the circumstances is meager, but sufficient, the court can infer facts to prove the negligence out of the circumstantial and meager evidence. Where the 'res' is unknown, a reasonable inference may be drawn, if supported, on a mere balance of probabilities. It follows that the doctrine is not applicable if the thing 'res' is known."

> "There was no evidence to raise a presumption of negligence. It was difficult if not impossible to find that the accident was due to any act of negligence on the part of the defence. I hold that this is not a case in which the doctrine of res ipsa loquitur can be invoked."

I find also that in this case the doctrine cannot be upheld. The only admissible evidence suggests that the deceased was undergoing a high risk pregnancy,

worked continuously in strenuous jobs throughout the term of the pregnancy, up to the day before being admitted to hospital to give birth, in addition to having a history of at least three prior abortions. In these circumstances the doctrine cannot apply.

Where the cause of death or final diagnosis has been established and is known and in this case, not contradicted, the maxim of res ipsa loquitor does not apply.

Conclusion

Having heard the evidence of Dr. Roberts and seen the exhibits this court finds nothing in the medical report, in the evidence of Dr. Roberts and the evidence of the other witnesses to attribute negligence on the part of the first named defendant and the second named defendant.

This court therefore upholds the submissions of no case to answer made by the first and second named defendants and hereby dismiss the plaintiffs' writ of summons filed in this action.

Costs $50,000 each to the first and second named defendants.

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Diana F. Insanally

Puisne Judge (ag.)

Date: 19th September 2013