

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 35 of 2018

BETWEEN

ISEI MANU a minor suing by next friend Meli Nanuku of Vunisea,
Tokaimalo, Saivou, Ra.

PLAINTIFF

AND

PERMANENT SECRETARY FOR HEALTH Ministry of Health,
Dinem House, Army Street, Suva.

FIRST DEFENDANT

AND

THE ATTORNEY GENERAL OF FIJI is being sued pursuant to the
Crown Proceedings Act.

SECOND DEFENDANT

Counsel : Mr Maisomoa K. for the Plaintiff
Mr Mainavolau J. for the Defendants

Dates of Hearing : 3rd & 5th April 2023

Date of Judgment : 25th May 2023

JUDGMENT

The plaintiff instituted these proceedings seeking damages for the death of his son due to negligence of the staff nurse who attended to the deceased infant at Tokaimalo Nursing Station.

The plaintiff claims following damages:

- a) Special Damages to the sum of \$3,300.00.
- b) General Damages.
- c) Punitive Damages.

- d) Costs of this action on Solicitor Client indemnity basis.
- e) Interest under Law Reform (Miscellaneous Provisions)(Death and Interest) Act.
- f) Such further or other relief as this Honourable Court may deem just and necessary.

The particulars of negligence of the 1st defendant as pleaded in the statement of claim are as follows:

- a) The 1st defendant through its servant and/or its employee and/or its agent failed to take Isei Manu's pulse as required as required before giving medication or injection.
- b) The 1st defendant through its servant and/or its employee and/or its agent failed to advise the mother the purpose for the two fluid medication that was given orally to the baby before injection.
- c) The 1st defendant through its servant and/or its employee and/or its agent failing to submerged the cotton with light methylated spirit instead he submerged it in the tap water and rubbed it on the baby's thighs.
- d) The 1st defendant through its servant and/or its employee and/or its agent failed to inject medication into the baby's thighs instead he attended the ambulance with reason best known to him.
- e) The 1st defendant through its servant and/or its employee and/or its agent in his returned from attending the ambulance failed to submerge the cotton wool in the light methylated spirit instead he submerged it in the tap water then injected the medication into the baby's body.
- f) The 1st defendant through its servant and/or its employee and/or its agent failed to advice to refer the baby to the doctor before he gave two medication orally.

- g) The 1st defendant through its servant and/or its employee and/or its agent failing to exercise such degree of care that led to the infant death.
- h) The 1st defendant through its servant and/or its employee and/or its agent failing to foresee that medical carelessness will further endanger the health of the infant.
- i) The 1st defendant through its servant and/or its employee and/or its agent failing to treat the infant with proper oral medication via doctor's recommendation or advice led to the infant's over dose in medication eventually death.

At the pre-trial conference parties admitted the following facts:

1. The plaintiff was born on 06th July 2017, and at the time of his passing he was 6 weeks old.
2. The plaintiff was a healthy baby and his weight was 3.82 kg, head circumference was 33 cm, length was 54 cm and his discharge weight was 3.6 kg.
3. The plaintiff's weight and length were increased to 4.25 kg and 55 cm respectively at his first clinic on 1st August 2017 at Nayavu Health Centre.
4. The 1st defendant owns and administers Tokaimalo Nursing Station and also provides medical advice and other health services.
5. The 2nd defendant is the overall adviser of the 1st defendant and she is sued under the State Proceedings Act.
6. The 1st defendant as an employer at the material time has the general responsibilities of supervising its employees.
7. The plaintiff attended his 6th week clinic at Tokaimalo Nursing Station on 22nd August 2017 as required.

8. The 1st defendant's employee at Tokaimalo Nursing Station perused the plaintiff's Fiji Child Health Record after which the employee took his weight and length wherein both had increased to 4.8 kg and 58 cm respectively.
9. The plaintiff's record indicated that he was healthy and there was no sign of sickness appearing in the plaintiff.
10. The 1st defendant's employee after attending to the ambulance returned to the plaintiff and continued treating him.

At the hearing plaintiff called three witnesses, the mother and the father of the plaintiff and a doctor. The plaintiff's mother and the father took the plaintiff who was six weeks old to the Tokaimalo Nursing Station on 22nd July 2017. The father dropped the baby and the mother at the Nursing Station and went to work.

The plaintiff's mother testified that at about 11.00 a.m. the nurse checked the baby's height and length and then gave two different drops of medicine orally and took some cotton wool, put it in water and rubbed the baby's thighs with that and at the same time he received a call informing him that an ambulance is coming. The nurse had then left the baby and gone to attend the ambulance. When he came back he soaked the cotton wool in tap water, rubbed the baby's thighs and administered two injections and told her that the child will cry.

The witness also testified that the plaintiff's mother then came out of the Nursing Station and waited for her husband to come from work and the baby started crying and husband came at about 5.00 p.m. and the baby was still crying but after 10.00 p.m. the baby slept and in the morning she tried to breast feed him but he was not moving and blood and a yellow fluid came out of baby's mouth. When they took the baby to the hospital the baby was pronounced dead.

The baby's father testified that when they went home the baby was crying and he asked the wife to breast feed him and after breast feeding the baby went to sleep at about

11.00 p.m. In the morning his wife shouted and told him that the baby was not moving and when they took him to the Rakiraki Hospital the doctor said that he had passed away.

The plaintiff called Dr. Josefa Koroivueta to testify. This doctor had not seen or examined the baby. He had prepared a report and it is based on the information provided in the Out Patient Record, Dr Vijay Chand's report, Inquest Report and the statement of the nurse Waisale Sigawale. This report was objected to by the learned counsel for the defendant on the grounds that it had not been signed by the doctor and it was filed at the last moment without giving sufficient notice to the defendants.

The question is, if the court admits this report in evidence would it cause any prejudice to the defendants. The defendants had the opportunity to cross-examine the author of the report and the documents relied on by the doctor who prepared the report were available to the defendants long before the trial commenced. Therefore, no prejudice would be caused to the defendants if the court admits this report in evidence. The objection of the defendants is therefore, overruled.

Dr Josefa Koroivueta testified referring to his report. In his report at paragraphs 5, 6 and 7 under the heading of Expert Summarized Opinion it is stated:

5. I am concerned about the documentation of "damp soaked swabs" at the injection site. It lacks to specify whether sterile skin preparation using alcohol swabs was carried prior to administration of the injectable vaccines and also after the vaccinations. The skin is the largest organ of the body mixed with bacterial flora and that a break in the skin with intramuscular (IM) injection can be a portal for these bacterial pathogens to penetrate the skin and gain access into the blood circulation and caused localized or systematic infections.

6. There was no definite mention of cerebral edema in the autopsy report while specifically mentioned that Bilateral Bronchopneumonia as the decease or condition directly leading to death. The certificate of death 143642 mentioned that the cause of death being Bilateral Bronchopneumonia and cerebral edema. There is no consistence in the cause of death as mentioned.
7. There is microscopic pathological evidence on fibrino-suppurative changes in both lungs with hyper-expanded lungs. Disorders of this nature don't occur overnight and signal that the baby has been ill for at least for some time and unless one carries out proper clinical assessment in a child who can't voice their symptoms then only you prevent any incident occurring. This was not done for this child when given the high risk health situation should something happens to a child when back in communities where health access is limited after hours and during the night.

The nurse who attended the baby testified that he used saline to clean the thighs of the baby before administering the vaccinations. However, the evidence of the baby's mother is that the nurse used tap water to clean the baby's thighs. There is no other evidence to support the evidence of these two witnesses. There is another witness who had been there at that time but she said in her evidence that she did not see the nurse attending to the baby. The nurse who administered the vaccinations knows exactly what he used to clean the thighs of the baby better than the baby's mother. The court will therefore, rely on the evidence of the nurse in this regard.

Dr. Koroivueta complains that there is inconsistency as the cause of death in the certificate of death (P3) and the pathologist report (P4). As per the death certificate cause of death is bilateral pneumonia and cerebral edema whereas according to the pathologist's report the cause of death is bilateral bronchopneumonia. Dr Daniella John,

the Pathologist who conducted the post-mortem examination explained this difference. She said that the death certificate is issued to facilitate the funeral arrangements before the investigations were completed and that is why the death certificate gives two causes of death.

In the report under the subheading in my opinion cause of death was:

(a) Decease or condition directly leading to death*

(a) BILATERAL BRONCHOPNEUMONIA

Dr Daniella also brought to the attention of the court the following from her report which says:

“*This does not mean the mode of dying, such as, e.g. heart failure, asphyxia, asthenika, etc; it means the disease, injury, or complication which caused death.

In my view Dr Daniella has explained to the satisfaction of the court the inconsistency between the certificate of death and pathologist’s report.

Dr Daniella also said cerebral edema does not cause pneumonia but pneumonia causes cerebral edema.

In Dr Koroivueta’s report it is also stated that the child has been ill for some time and to prevent happening of any event there should have been a proper investigation carried out.

The plaintiff in evidence tendered the medical certificate dated 05th March 2018 of Dr Vineet Vijay Chand and the defendant called the doctor to testify at the trail. In his report the doctor says:

According to our medical records, the above named infant, Isei Manu was seen at Tokaimalo Nursing Station on 22/8/17 for 6weeks immunization.

He was seen by D/N Waisale and the child was assessed to be in good health so he was given the standard vaccination schedule for a 6 weeks old baby. According to our records, it was noted that the baby was well and was immunized and the baby's weight was 4.8 kg and length of 58cm.

As Dr Koroivueta states in his report if the baby was sick for some time he should have shown some symptoms for the parents to consult a doctor. This baby was not brought to the nursing station for any treatment but to have the regular vaccinations administered.

The learned counsel alleged that the nurse who attended the bay did not follow the World Health Organization's Integrated Management of Childhood Illness (P8). As I stated in the paragraph above the child was not brought to the nursing station for treatment of any illness. These rules or guidelines become applicable only when a sick child is brought to a hospital.

Dr Daniella, referring to her post-mortem report, testified that she saw changes in the lungs like pneumonia and swelling in the brain could be due to pneumonia. The doctor also said that when the babies are breast fed the chance of aspiration is high.

From the evidence it appears that the plaintiff has failed to establish that the death of the infant was caused by any act of negligence on the part of the defendants' employees.

The learned counsel for the plaintiff cited several authorities to show that hospitals owe a duty of care to every patient who comes for treatment. The learned counsel cited the following authority in his submissions.

DENNING L.J in **CASSIDY v MINISTRY OF HEALTH** (1951) 2 K.B. 343 at 359 on the exercise of reasonable care on the part of the doctor and duty of care vested on the hospital is apt:

If a man goes to a doctor because he is ill, no one doubts that the doctor must exercise reasonable care and skill in his treatment of him: and that is so whether the doctor is paid for his services or not. But if the doctor is unable to treat the man himself and sends him to hospital, are not the hospital authorities then under a duty of care in their treatment of him? I think they are. Clearly, if he is a paying patient, paying them directly for their treatment of him, they must take reasonable care of him; and why should it make any difference if he does not pay them directly, but only indirectly through the rates which he pays to the local authority or through insurance contributions, which he makes in order to get the treatment? I see no difference at all. Even if he is so poor that he can pay nothing, and the hospital treats him out of charity, still the hospital authorities are under a duty to take reasonable care of him just as the doctor is who treats him without asking a fee. In my opinion authorities who run a hospital, be they local authorities, government boards, or any other corporation, are in law under the selfsame duty as the humblest doctor; whenever they accept a patient for treatment, they must use reasonable care and skill to cure him of his ailment."

This is a universally accepted principal of law. However, the burden is on the plaintiff to establish the negligence on the part of the hospital and the death was caused due such negligence.


As I have stated earlier in this judgment the plaintiff the has failed to establish that the child suffered from Bronchopneumonia due to any of the alleged acts of negligence on the part of the nurse who attended to the child and administered the vaccination.

This action was instituted by the next friend of the plaintiff. Next friend means a person acting on behalf of an infant or other person under legal disability. The question arises

whether a deceased person can be represented by a next friend. In my view it cannot and the proper course would have been to obtain letters of administration before instituting these proceedings. The court is therefore, of the view that since the plaintiff is deceased there cannot be a next friend and the plaintiff's father has no *locus standi* to institute these proceedings on behalf of the deceased plaintiff.

ORDERS

1. The plaintiff's action is dismissed.
2. There will be no order for costs.


Lyone Seneviratne



JUDGE

25th May 2023