

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**CIVIL ACTION No. LBS HBC 50 of 2018**

**BETWEEN:**            **LILA WATI** of Naduna, Labasa, Vegetable Farmer/House Wife.  
**1<sup>st</sup> PLAINTIFF**

**AND:**                    **DHRUV DEO** of Naduna, Labasa, Bee/Honey, Rice Farmer and Cane  
Farmer.  
**2<sup>nd</sup> PLAINTIFF**

**AND:**                    **THE DIVISIONAL MEDICAL SUPERINTENDENT NORTHERN** of  
Labasa Divisional Hospital, Labasa.  
**1<sup>ST</sup> DEFENDANT**

**AND:**                    **THE DIVISIONAL MEDICAL SUPERINTENDENT CENTRAL** of CWM  
Hospital, Suva.  
**2<sup>ND</sup> DEFENDANT**

**AND:**                    **THE PERMANENT SECRETARY FOR HEALTH** Ministry of Health,  
Dinem House, 88 Amy Street Toorak, Suva.  
**3<sup>RD</sup> DEFENDANT**

**AND:**                    **THE ATTORNEY GENERAL OF FIJI** as the legal representative of the  
Government of Fiji.  
**4<sup>TH</sup> DEFENDANT**

**Counsel:**                Mr. A. Ram and Mr. M . Khan for the Plaintiffs  
Ms O. Solimailagi and Ms S. Pratap for the Defendants

**Date of Judgment : 1.12.2025**

**JUDGMENT**

## INTRODUCITON

- [1] The first plaintiff, a 61-year-old vegetable farmer and housewife residing in Naduna, Labasa, led an active life prior to the events in question. She had a prior history of knee pain ulcers and had attended Labasa hospital. The second plaintiff, her 63-year-old husband, is a bee/honey farmer, rice farmer, and cane farmer.
- [2] On 18 .8. 2015, the first plaintiff twisted her left leg, experiencing minor pain. The following day, she presented at Labasa Hospital with knee tenderness and swelling. X-rays revealed no bone abnormality, leading to a referral for physiotherapy where she was diagnosed with a Grade 2 meniscal tear.
- [3] She attended weekly clinics until 23 .11. 2015, for physiotherapy when she had insisted to see referred to visiting surgeon Dr. Loeffler. Due to persistent tenderness, she underwent arthroscopic knee examination at Labasa Hospital on 26 .11. 2015 and was discharged the next day, with no other invasive procedures performed.
- [4] Approximately one-week post-procedure, the first plaintiff's left knee swelled significantly, causing excruciating pain and immobility. She experienced gross swelling, unbearable pain, and required assistance to ambulate. Multiple admissions, discharges, and readmissions at Labasa Hospital followed, but the cause of the swelling remained undiagnosed, and her condition deteriorated.
- [5] Second Plaintiff, the husband, abandoned his daily work to provide nursing care, as the first plaintiff became bedridden and wheelchair-dependent. To accommodate her limited mobility and the external location of toilet facilities, an internal master ensuite was constructed
- [6] In January 2016, Labasa Hospital referred the first plaintiff to CWM Hospital for an MRI, but no diagnosis was made, and knee replacement was recommended instead. The swelling and pain persisted unresolved. Returning to Labasa on 24.2.2016, the hospital suggested overseas knee replacement. Further admissions and tests at Labasa failed to identify or treat the issue.
- [7] On 5 .6. 2016, nearly seven months after the arthroscopy, she was admitted to CWM Hospital on referral and examined by Dr. Doron Sher. Her medical records were unavailable, necessitating a fresh assessment. A synovial biopsy on 10 .6. 2016 revealed *Pseudomonas aeruginosa*, a life-threatening bacterium, deep in the knee, with findings of thickened scarred synovium, chondrolysis, abnormally soft bone, and no frank pus. This confirmed septic arthritis of the left knee, prompting surgery to remove dead tissue.
- [8] The first plaintiff received intravenous and oral antibiotics, specially imported. She remained admitted for six weeks. Over seven months, her knee rapidly degenerated due to the infection. An examination by Dr. Alvin De Asa on 22.9.2016 noted limping with walker assistance, significant swelling and tenderness, reduced flexion/extension

(limited to 90 degrees), and X-rays showing severe cartilage loss across all knee compartments.

[9] On 21.11.2016, the first plaintiff underwent total knee replacement in India, accompanied by her daughter for nursing support. Ministry of Health covered hospital costs, while the plaintiffs bore airfares and living expenses. In total, she endured 102 days of hospitalization and profound pain and suffering.

[10] First Plaintiff allege that her infection, resultant septic arthritis, knee deterioration, and associated suffering were caused by the defendants' negligence, including failures in diagnosis, treatment, and professional skill by hospital staff.

[11] Plaintiff in the amended statement of claim state negligence in the following manner;

LABASA HOSPITAL - DR LOEFLER DR MALONI and DR VULIBECI

- a. Failing to accord the 1st Plaintiff with proper medical and surgical specialist and treatment.
- b. Allowing surgical equipment to be contaminated and failing to keep instruments sterile or sterilizing the same prior to use.
- c. Conducting arthroscopy when there was no need to conduct one.
- d. Conducting arthroscopy when there was a serious risk of infection.
- e. Carelessly causing infection to the 1st Plaintiff deep inside the knee.
- f. Failing to diagnose the cause of the infection expeditiously.
- g. Failing to urgently administer appropriate drugs in light of the serious infection.
- h. Recommending a lot more physiotherapy and aggressive rehabilitative sessions when it was inappropriate in the circumstances.
- i. Recommending knee replacement surgery at the material time inappropriately.
- j. So far as may be necessary, the Plaintiff will rely upon the doctrine of res ipsa loquitur (or the 1st Plaintiff will rely on the facts as evidence of negligence that the use of the non-sterile arthroscopy equipment led to the bacterial infection in the left knee).

CWM HOSPITAL- DR TALOGA DR BAULEKA

- a. Failing to accord the 1st Plaintiff with proper medical and surgical specialist and treatment.
- b. Failing to diagnose the cause of the infection expeditiously.
- c. Failing to urgently diagnose and administer appropriate drugs in light of the serious infection.
- d. Recommending knee replacement surgery when it was inappropriate in the circumstances.
- e. Not having appropriate drugs at the hospital to administer urgently to the 1st Plaintiff.

[12] First Plaintiff claims that as a consequence of the Defendants negligence the first Plaintiff has suffered intensive pain and suffering, loss and damages and loss of amenities of life.

[13] Second Plaintiff also claims damages due to economic loss to him due to his full-time nursing care of Plaintiff.

[14] Plaintiffs in the written submission state that first Plaintiff was not properly informed of the risks involved in the surgery. This was not pleaded in the amended statement of claim.

[15] Without prejudice to above, Plaintiff admitted that she had ample time to discuss about her surgery and had discussed about that with her daughter, before it was performed on 26.11.2015.

[16] She had placed her signature on the Labasa Hospital Surgery Consent Form (page 98 Volume 1 Tab1 of Defendant's Bundle of Documents) and estopped from denying to the express statements therein. It stated;

“The risks and possible undesirable consequences associated with the procedure have been explained to me including , but not limited to blood loss, transfusion reactions, **infection**, heart complications, blood clots, loss of use of body parts or other neurological **injury or death**

In permitting my doctor to perform the procedures I understand that unforeseen conditions may be revealed that may necessitate change or extension of original procedures or a different procedure than those already explained to me. I therefore authorized request that the above-named physician, his assistant or his... perform such procedures as necessary and desirable in the exercise of his/her professional judgment. I authorize that a medial photography or video may be utilized for medical, scientific or educational purposes, provides my identity is not revealed in the photo or text

**I acknowledge that I have read or had read to me and fully understand the above information.** Furthermore, I certify that all my questions and concerns regarding the procedure , its attendant risks, benefits and alternatives have been explained to my satisfaction”(emphasis added)

[17] Plaintiff admitted she signed the consent form and now she is estopped from denying the content. If she and her relatives desired any clarification, they had the opportunity to do so. The surgical procedure involved did not require detailed explanation other than what was stated in the consent form.

[18] It was also evidenced that Plaintiff had requested advice from visiting surgeon as opposed to physiotherapy which had shown some progress. Patient autonomy required that opportunity was given to Plaintiff when available and visiting surgeon had recommended surgical intervention.

- [19] Plaintiff in her evidence also stated that she discussed this with her daughter and this consent form specifically state there was a risk of infections from surgical intervention. This can happen even without any negligence on the part of the Defendants who were involved in the surgical intervention.
- [20] Similarly due to the evasive nature of the Bacteria that infected, it was hard to detect or identify and can remain in the human body without detection in dormant for long periods. This nature of the Bacteria makes it hard to detect.
- [21] It has less virulent forms so there could not be visible symptoms of infection and detection was also difficult. So this evasive nature of type of bacterial infection of first Plaintiff also leaves the question whether she was already infected with Plaintiff and remained dormant but was aggravated by Plaintiff surgical intervention without being infected by such procedure. This is one out of few possibilities of infection of the bacterial infection.
- [22] So detection of *Pseudomonas aeruginosa* ( the Bacteria) after surgery, ipso facto does not prove it was infected from the surgical intervention. It was only one out of few possibilities.
- [23] Plaintiff's submission based on alleged failure to inform the risk of infection is without merit. Any surgical intervention has potential for infection despite following standard protocols as all possibilities of infections from the bacteria cannot be excluded. So negligence is not the only cause of the development of bacterial infection after surgery. So there is no presumption of negligence even if such an infection is caused by surgery, as it is an inherent risk of any surgery.
- [24] UK House of Lords decision of Wilsher v Essex Area Health Authority [1988] 1 All ER 871 held that when there are number of possible causes, one type of defendant's negligence cannot give rise to a presumption against defendant.
- [25] So there are number of possibilities, and one is the infection from negligence of surgical staff and infection after surgery was not sufficient proof of negligence or breach of duty of care.
- [26] Similarly due to evasive nature of type of bacterial there was no negligence on the part of CWM hospital for its failure to detect infection prior to second surgical intervention. CWM hospital medical officers had carried out reasonable tests to detect the cause and there was no negligence on their part.
- [27] There was no negligence on the part of surgical staff of CWM hospital for not recommending surgical procedure that was recommended by Dr Sher. This was a professional decision depending on competency or skill of surgeon for surgical intervention when there were already some complications.

- [28] The Plaintiffs allege that the post-operative infection contracted by the 1<sup>st</sup> Plaintiff was caused by the Defendants' negligence. The Defendants deny liability and submit that the claim must fail on both factual and legal grounds.
- [29] On balance of probability Defendants' witnesses, Dr Maloni Bulanauca (Dr Maloni) and Dr Pauliasi Bauleka (Dr Bauleka), along with the documents submitted, proved that the standard duty of care was discharged to the first Plaintiff.
- [30] Clinical indications for performing an arthroscopy on 26 .11. 2015 was a professional decision taken with consent of Plaintiff. The standard procedures were observed during pre-operative, operative, and post-operative care.
- [31] Clinical findings and results, the Defendants could not reasonably have foreseen *Pseudomonas aeruginosa* (the Bacteria) that caused soft tissue degeneration and swelling.
- [32] There was no evidence to support that the infection was caused by surgical team of Labasa Hospital. There were no prior or subsequent detections of the Bacteria.
- [33] Even if I am wrong on the above, infection is an inherent risk associated with any surgical intervention , including arthroscopy, and this risk was specifically stated in the consent form. Considering the nature of the surgery , surgical staff had informed the risks to first Plaintiff. These are risks patients go through for better diagnosis or treatment.
- [34] The Defendants adduced the following evidence in the trial:
- (1) Lila Wati's Labasa Hospital Medical Folder – Defendants' Exhibit 1
  - (2) Lila Wati's CWM Hospital Medical Folder – Defendants' Exhibit 2
  - (3) Copy of Physiotherapy Outpatient Referral Form of Lila Wati – Defendants' Exhibit 3
  - (4) Labasa Hospital and Pharmacy Records - Defendants' Exhibit 4
  - (5) Infection Control Statistics of Labasa Hospital 2015-2018 - Defendants' Exhibit 5
  - (6) Radiology Visits of Records of Lila Wati - Defendants' Exhibit 6
  - (7) Steriliser Manual of Labasa Hospital - Defendants' Exhibit 7
  - (8) Labasa Hospital Physiotherapy Visits of Lila Wati (August to November 2015)
  - (9) Labasa Hospital Physiotherapy Diary (January – December 2017) - Defendants' Exhibit 9
  - (10) Copies of Labasa Hospital X-rays of Lila Wati dated 6 June 2016, 19 July 2019, 9 September 2016 - Defendants' Exhibit 10
  - (11) Copies of Labasa Hospital X-ray request forms for Lila Wati - Defendants' Exhibit 11

- (12) Copy of Doctor Alofarin Radiology Report from CWMH Date 4 October 2016 - Defendants' Exhibit 12
- (13) Tamavua/Twoimey Hospital Medical Former of Lila Wati - Defendants' Exhibit 13
- (14) Labasa Medical Folder of Dhru Deo - Defendants' Exhibit 14
- (15) Global Guidelines for the Prevention and Surgical Site Infection - Defendants' Exhibit 15
- (16) Getting It Right First Time Surgical Site Infection - National Survey NHS (April 2019) - Defendants' Exhibit 16
- (17) ICRC Sterilisation Guideline - Defendants' Exhibit 17
- (18) Guideline of Disinfection and Sterilization in Healthcare Facilities (2008) CDC,

[35] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 set out the test for determining the standard of care owed by medical professionals to their patients (i.e Bolam test). This authority established that the medical professional will not be in breach of their duty of care if they acted in a manner which was in accordance with practices accepted as proper by a responsible body of other medical professionals with expertise in that particular area.

[36] In support of its position, the Defendants rely on the following grounds.

- (1) The surgical procedure performed on 26.11. 2015 was properly indicated and consented to by the 1st Plaintiff and her attending immediate family members.
- (2) Infection is a known and accepted complication in invasive medical procedures, including arthroscopy.
- (3) The Defendants adhered to applicable standards and guidelines, including for the sterilization of relevant instruments involved in arthroscopy.
- (4) First Plaintiff had relevant pre-existing conditions, which increased the risks of infection.
- (5) Post-operative care provided was based on clinical findings and results, and standard procedure. According to Plaintiff she had not dressed the wound though there was evidence that this was advised and advice given with necessary material provided.
- (6) All relevant treatment and medications were administered.

[37] First Plaintiff presented with a Grade two meniscal tear as confirmed by physiotherapy and clinical assessment in August 2015. Her clinical findings included 'clicking' of her left knee and restricted bending of the same knee. It was clear that her quality of life was affected by her physical condition, which, according to her evidence in chief, was due to a fall in her garden.

- [38] The decision to proceed with arthroscopy was medically justified and consistent with standard orthopedic practice. It was also evidenced that Plaintiff had requested to seek advice from visiting surgeon and her request was accommodated by Labasa Hospital staff.
- [39] First Plaintiff, having been informed of available options, including physiotherapy, consented after consulting her family members and elected for surgery. Informed consent was obtained, according to the consent form which had clearly stated risks associated including risk of infection, before the arthroscopy procedure on 26 .11. 2015, and her written consent is provided.
- [40] Evidence established that Labasa Hospital strictly adheres to accepted standards, including thorough sterilisation of instruments and relevant skin area, usage of single-use instruments, and reusable instruments and specialised instruments. There was no detection of infection from the Bacteria previous to this incident in Labasa. This stands for the testimony to its standards followed though it is hard to eradicate all risks of infection despite following standard procedures.
- [41] The occurrence of infection, in and of itself, does not give rise to a presumption of negligence. It is a misconception to apply standard ‘facts speak for itself’ maxim for any bacterial infection. The Bacteria that were infected with the first Plaintiff is more evasive and harder to detect considering it was even could live in deep anaerobic environment due to its nature. This makes detection even more difficult.
- [42] In Roe v Ministry of Health and Others [1954] 2 All ER 131 at 136 held
- “In medical cases the fact that **something has gone wrong is very often not in itself any evidence of negligence**. In surgical operations **there are, inevitably, risks**. On the other hand, of course, in a case like this, there are points where the onus may shift, where a judge or jury might infer negligence, particularly if available witnesses who could throw light on what happened were not called. “
- [43] In contrast Defendants called available witnesses.
- [44] The 1st Plaintiff had a medical history a foot ulcer in 2009, and a leg wound in 2012. These conditions significantly increase the risk of infection post-operatively as well as pre surgery. She works on a farm this also increases this infection risk.
- [45] Medical expert testimony confirms that infection may arise from a patient’s flora or pre-existing bacteria activated during or after surgery.
- [46] The Plaintiff was reviewed several times after surgery. Initial reviews on 2.12.2015 and 9 .12 2015 recorded no pain and a satisfactory wound condition. Antibiotics were

administered. <sup>1</sup>. First Plaintiff was issued with dressings and medication but in her evidence first Plaintiff said she did not dress the wound.

- [47] Subsequently imaging and interventions, including aspirations and MRIs, were promptly conducted as symptoms progressed<sup>2</sup>. It was not negligence on the part of both hospitals not to detect infection of the Bacteria earlier.
- [48] The 1st Plaintiff also admitted in evidence that she was not aware of a wound from the arthroscopy requiring post-operative care, despite providing her with cleaning and bandage of the wound .
- [49] Evidence of, Dr Bauleka and Mr De Asa, admitted in evidence that the Bacteria are commonly found in farming areas, in damp areas such as in the soil, and in human flora (body). Both are commenting on infection of the Bacteria after detection and treatment.
- [50] 1st Plaintiff's arthroscopy, Dr Bauleka and Dr Maloni explained that even where the patient's skin area and relevant medical instruments are sterilised immediately before surgery (betadine for skin and cidex for instruments), there is an inherent risk of bacteria contracted (i.e less than 1%. This is an internationally accepted room for error.
- [51] Dr Bauleka also led evidence that the bacteria could have been contracted in more than one way and infection from surgery was only one possibility. This was not proved. Even proved this alone is not proof of surgery.
- [52] Defendants' evidence in chief confirmed that the 1st Plaintiff had a surgery of her left foot due to a foot ulcer in 2009. This was also one potential entry of the Bacteria that could remain in dormancy due to it being facultatively anaerobic
- [53] Another cause could be the injury to first Defendant's left leg in 2012 <sup>3</sup>in a farming environment, which increases the risk. The Bacteria may lay in a dormant state, until it gets disturbed such as surgical intervention. Dormant state may not show any symptoms and even shown it will be hard to detect.

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1. <sup>1</sup> see pages 59 and 59(flipside) of the Defendants Bundle of Documents).

2. <sup>2</sup> (see pages 84-88, 94, 100-101of Defendants' Bundle of Documents)

<sup>3</sup> see page 50 of Defendants' Bundle of Documents)

[54] The time taken for detection of the Bacteria also depend on many factors and the delay in detection itself was not negligence. CWM hospital had followed all procedures reasonably required to do with its available resources. There was no negligence on the part of CWM hospital.

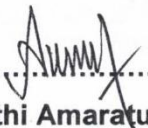
### **CONCLUSION**

[55] Plaintiff had failed to establish a lack of duty of care medical staff of by both hospitals and accordingly the statement of claim is struck off. Considering the circumstances no cost granted.

### **FINAL ORDERS**

- a. Plaintiff's action is struck off .
- b. No costs.



  
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**Deepthi Amarasingha**  
**Judge**

**At Suva** this 01<sup>st</sup> day of December, 2025.

### **Solicitors**

Gibson and Law

The Attorney General's chambers