



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2013 HCV 02178

BETWEEN **PAULA MITCHELL** **CLAIMANT**
(BY NEXT FRIEND DAPHNE REID)

AND **GLOBAL LABORATORIES AND** **DEFENDANT**
HEALTH SERVICES LIMITED

**Assessment of Damages- Endocrinology test – Misdiagnosis due to erroneous results
–Anxiety- Damages.**

Carol Davis for the Claimant

Defendant not present or represented

Heard: 12th and 21st November 2014

COR: Batts J

1. The hearing of this assessment of damages commenced after the Defendant was called and there was no answer. Affidavits of Posting dated 15th April 2013, 4th December 2013 and 3rd March 2014 had been filed. Counsel advised that the items had not been returned in the mail.
 2. Daphne Reid gave evidence. Her witness statement dated the 21st February 2014 was allowed to stand as her evidence in chief. The Claimant's counsel then closed her case and made submissions.
 3. The evidence tells a very sad tale. The witness' child, Paula Mitchell has been afflicted with hydrocephalus since the age of 4 or 5 months. She is incapable of looking after her own affairs.
 4. In 2007 the said child was given an endocrinology test by the Defendant. That test reported that the Claimant's thyroid function was abnormal and out of range.

5. As a result, the Claimant was treated by her doctors with medication for the said alleged abnormal thyroid function. In fact the Defendant's test results were incorrect and had been reported in the wrong units. This was admitted by the Defendants by way of a letter dated the 29th May 2009 (Exhibit 1).
6. The incorrect test results resulted in the following:
 - a) Referral to the University Hospital of the West Indies and her attendance at clinic twice.
 - b) Her being given medication which caused vomiting, loss of appetite, loss of weight and headaches.
 - c) A milky substance coming from her breasts.
 - d) She became aggressive.
 - e) The symptoms continued for approximately 1 year.
 - f) She was twice admitted to hospital for 2 days.
 - g) She underwent unnecessary blood and radiological investigations and an MRI.
 - h) She was on two occasions unnecessarily sedated and made eight unnecessary visits to the Endocrine Department of the University Hospital.

7. The evidence of Daphne Reid, which I accept as truthful, was in many respects corroborated by the Medical Report of Doctor Wright-Pascoe (Exhibit 5). In this report the entire sorry narrative is detailed in the rather impersonal lexicon of the medical practitioner. The doctor says in part,

“My Opinion

The wrong thyroid function tests that were issued by Global Laboratories and Health Services on 30/10/2007 resulted in

- a) *Unnecessary blood and radiological investigations*
- b) *Unnecessary hospitalization X 2*
- c) *Unnecessary sedation*
- d) *Unnecessary visits to the Screening MOPD and the Endocrine Clinics X 8*
- e) *Unnecessary exposure to the antithyroid drugs from 12th February 2008 to 3rd June 2009 and Bromocriptine 22/10/2008 to 5/8/2009.*

In addition the patient and her family would have experienced anxiety about the disease she was being treated for and anxiety about the hospitalizations and visits to the hospital.

However, the patient was not in my opinion permanently injured nor has the patient been permanently partially or otherwise disabled. It is not expected that the patient's lifestyle in the future might be affected from the above, however the patient may develop post traumatic stress syndrome."

8. Claimant's counsel submitted that for pain, suffering and loss of amenities an award of \$6 million was appropriate. She relied on Ivan Morgan v Ministry of Health, (Judgment of Marsh J dated 19th December 2007) and annotated at Khan Vol. 6 page 220.
9. In that case the Claimant, a teacher, was misdiagnosed as being HIV positive. The 1st Claimant was found to be suffering from phobic anxiety and sexual anmedonia leading to abstinence for a year. She lived in constant fear of sexual contact because of flashbacks and consorts response to previous trauma. The 2nd CLaimant had severe anxiety and phobic avoidance.
The learned judge awarded \$3,500,000 to the 1st Claimant and \$584,000 to the 2nd Claimant. The award to the 1st Claimant when updated using the CPI amounts to \$6,300,000.
10. In my view the case of the 1st Claimant in the case cited is more egregious than in the case at bar. That Claimant was pregnant and her mental state of anxiety must have been extremely magnified as a result. A diagnosis of HIV also had an associated stigma at the time. In my judgment \$3million is a just and fair award for the physical inconveniences pain and suffering as well as the anxiety caused by the Defendant's negligence.
11. Insofar as the special damages are concerned I agree with the submissions of counsel that, although not all vouched by documentation, the proof is adequate for the amounts claimed; save for the cost of hospitalization.
12. I therefore give judgment for the Claimant against the Defendant as follows:

1. General Damages for Pain Suffering and Loss of Amenities	\$3,000,000.00
2. Special Damages:	
(i) Costs of unnecessary tests	
- Blood tests (4x\$2,000)	\$8,000.00
- Biomedical tests	\$15,000.00
- MRI	\$36,000.00
- Heart	\$2,000.00
(ii) Unnecessary Endocrine/Hospital visits (8x\$2,400)	\$19,200.00
(iii) Costs of unnecessary screening	<u>\$650.00</u>
	\$80,950.00

Interest at 3% on General Damages from the 25th April 2013 to date of judgment.

Interest at 3% on Special Damages from the 12/2/08 to date of judgment.

Costs to Claimant to be taxed if not agreed.

**David Batts
Puisne Judge**