



Ediger v. Johnston

2013 SCC 18

Country: Canada

Region: Americas

Year: 2013

Court: Supreme Court of Canada

Health Topics: Child and adolescent health, Disabilities, Health care and health services, Health information, Hospitals, Informed consent, Medical malpractice

Human Rights: Right to health

Facts

The plaintiff, Cassidy Ediger (C) suffered from persistent bradycardia (slow heartrate) during birth resulting in severe brain damage.

During the delivery procedure, the doctor attempted a mid-level forceps procedure as C's mother's labour was not progressing. Dr. Johnston did not inform C's mother of the risks involved in the procedure including bradycardia and hence did not receive her consent. Further, Dr. Johnston did not set up the appropriate safety precautions such as ensuring that surgical back-up was immediately available in the event of there being a need to perform emergency Caesarean Section.

Dr. Johnson decided to abandon the mid-level forceps procedure and due to unavailability of an Anesthetist , it took 20 minutes to set up and perform a caesarian section. During the 20 minutes, the baby's umbilical cord became obstructed, which caused bradycardia and led to spastic quadriplegia (paralysis of the four limbs) and cerebral palsy (permanent movement disorder).

The trial judge found Dr. Johnson's application of the forceps likely caused the umbilical cord compression that led to bradycardia. The forceps had displaced C's head and left a space into which the cord fell and became compressed. Further, the trial judge found Dr. Johnston breached his standard of care by failing to inform Cassidy's mother of the risks involved in the forceps procedure and not receiving her consent for the same. Moreover, by not ensuring appropriate surgical backup, he again breached the standard of care. The court of appeal unanimously held the evidence did not support that the mid-level forceps procedure caused the compression of the umbilical cord and therefore the brain damage. Further, it held that the failure to have an anesthesiologist for the emergency caesarian section did not cause Cassidy's injury.

The central issue in this case was causation: did the doctor's breach of the standard of care cause C's condition.

Decision and Reasoning

The Court affirmed the decision of the Trial Judge holding the doctor liable for negligence. It states that an action of negligence requires proof of duty of care, breach of the standard of care, compensable damage and causation. Dr. Johnston did not dispute that the first three requirements were met but disputed the fourth requirement of causation. The court held that the evidence and expert opinion supported the assertion that the forceps moved the baby's head so that during a subsequent maternal contraction, the umbilical cord became compressed. The court further held that the standard of care was to take precautions such as having an anesthetist and operating room staff "immediately available" to help with a Caesarean section and resuscitate if needed, considering it was already a high risk pregnancy. Several experts had also testified that the mid-level forceps procedures are potentially dangerous and carry the risk of acute cord compression. Dr. Johnston was negligent and breached the standard of care by not taking these precautions. The Court held Dr. Johnston had a duty to obtain consent from Mrs. Ediger due to the risk of bradycardia and the subsequent risk of severe brain damage. The Court therefore held Dr. Johnston negligent as C could have been delivered by Caesarian Section unharmed.

Decision Excerpts

“Dr. Shone’s explanation of the “displacement” theory is the application of the second forceps blade requires the baby’s head to be manoeuvred, creating the space necessary for the umbilical cord to become trapped, such that it is later compressed by maternal contractions.” (para 37)

“Dr. Johnston was required, before he initiated the forceps procedure, to take reasonable precautions that would have been responsive to the recognized risk of bradycardia and the injury that results if bradycardia persists for more than 10 minutes.” (para 53)

“If such injury were a virtual certainty, Dr. Johnston’s duty to obtain informed consent would have included the duty to advise Mrs. Ediger that proceeding with the mid-level forceps delivery included the risk of bradycardia, and that in the event that that risk materialized, her baby would necessarily be born with severe and permanent brain damage because of the time required to arrange for surgical back-up.” (para 58)

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