D.N v. The MEC for Health, Gauteng

[2015] ZAGPPHC 645

Country: South Africa
Region:
Year: 2015
Court: The High Court Of South Africa, Gauteng North Division, Pretoria
Health Topics: Child and adolescent health, Health care and health services, Hospitals, Medical malpractice, Medicines, Mental health, Sexual and reproductive health
Human Rights: Right to bodily integrity, Right to health

Facts

The plaintiff filed a suit against the Member of the Executive Council for negligence on part of the George Mukhari Hospital during and after her caesarean (C-sec) operation and also the manner in which they treated her infant daughter. The said public hospital is under the administration of the Gauteng Provincial Department.

The plaintiff was anesthetized twice as the first dose was found to be ineffective. She was informed that the baby had suffered an injury in the form of a cut during the operation. She was not given the opportunity to see the child or the nature of the injury. She was allowed to see her daughter only on the third day and she was informed that the baby was crying in hunger. When she arrived at the neonatal ward, she found her baby in a dysfunctional or unoperational incubator. She further saw that there were two cuts on her babyâ€™s arm, which were not dressed. The baby was completely neglected and not even put on a drip. The cut required an operation, which was delayed by 2 days as there were other operations which took precedence as informed by the hospital staff.

The plaintiff also developed complications. The C-sec wound began to bleed. She also was made to wait for her treatment and was treated only after nine days of developing complications.

Decision and Reasoning

The court allowed the claims of the plaintiff in both respects- her and her infant daughterâ€™s. Expert evidences confirmed negligent act on part of the hospital staff. It stated that the infant daughter has her forearm lacerated due to negligence of the surgeon and she suffered pain and discomfort for three months.

Dr. Davis, a gynaecologist stated that although the occurrences have not affected the fertility or reproductive organs of the plaintiff, it has impacted the plaintiffâ€™s psychological well-being. From another expertâ€™s report, she was diagnosed as suffering from a mild posttraumatic stress disorder and would require psychological treatment for at least 40 sessions.

The court stated that the fact that the plaintiffâ€™s C-sec wound started to bleed would not prima-facie constitute negligence. However, the failure to act upon it immediately in terms of treatment and to subject the plaintiff to pain and suffering establishes a prima-facie case of negligence.

The Court ordered the defendant to pay a sum of R 40,000 in respect of future psychological treatment, R 36,000 for medical expenses, R 200,000 for the plaintiffâ€™s pain and suffering as general damages and R 300,000 for the infant daughterâ€™s pain and suffering in addition to the cost of litigation.

Decision Excerpts

â€œThe mere fact that the plaintiffâ€™s wound began to bleed may not in itself be ascribed to negligence and there no expert evidence to suggest that this complication arose as a result of a failure to perform the caesarean section according to accepted medical standards. But the subsequent failure to perform the operation that was necessary to repair the bleeding wound with due expedition, and to subject the plaintiff to days of pain, suffering, worry and disability while being parted from her child does not require expert evidence to establish a strong prima facie case of grave negligence by doctors and nurses alike. The defendant is an organ of State. The sole purpose of its existence is service to the public by providing health care (and possible also

education). Such health care should normally be rendered in an efficient manner unless the Stateâ€™s resources do not permit such service: Soobramoney v Minister of Health, Kwazulu Natal 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC); pars [11], [31] and [36]. There is no suggestion in the pleadings or the evidence that the defendant did not have the resources available to render effective health care that would seem to have been nothing more than routine. The services of the George Mukhari hospital are intended primarily for those members of our society who cannot afford private medical services. The plaintiff clearly falls into this category. Given the serious allegations against professional individuals, doctors and nurses, it is surprising that the defendant decided to play possum.â€• (Para 19)

â€œThe consequences for the child are of a permanent nature. She has two scars on her left arm that will require further treatment by a reconstructive surgeon once she has ceased growing. She experienced pain for several months after the wound became infected. She will require surgery once she has reached the age of sixteen or seventeen to remove the scars. She will have to treat the restored area with scar maturation and sun block on a daily basis for at least twenty-four months, at the present cost of R 400, 00 per month.â€• (Para 24)

â€œAs far as the costs of the action are concerned, the plaintiff and her child were left in the lurch by an organ of state. They were treated without empathy and without compassion. In this Court the defendant decided to play a role that was essentially obstructive. None of the essential features of the plaintiffâ€™s case were disputed or could be disputed, yet the defendant persisted in resisting both merits and quantum on the basis of a bare denial. Under these circumstances it would be iniquitous to expect the plaintiff to bear any portion of her own costs. As a mark of its disapproval of the defendantâ€™s approach to the matter the Court will therefore award the plaintiff attorney and client costs.â€• (Para 27)