



Pane v. The Member of Executive Council for Health

Case No. 131/2013

Country: South Africa

Region: Africa

Year: 2016

Court: High Court of South Africa, Free State Division, Bloemfontein

Health Topics: Health care and health services, Hospitals, Informed consent, Medical malpractice, Sexual and reproductive health

Human Rights: Right to bodily integrity

Facts

The appellant suffered an incomplete miscarriage and was admitted into the Manapo Hospital on the same day. A uterine evacuation was conducted. She alleges that she was discharged despite constant pain and swelling in her abdomen. She was given antibiotics and was instructed to come back for a check-up if she does not feel better.

She was readmitted to the hospital as the local clinic transferred her there after noting that she was suffering from backache, nausea and spotting. The diagnosis was that the uterus was perforated and there was a bowel obstruction. She alleges that she was admitted for a third time and operated on. When she regained consciousness, she was told that her uterus had been removed and a colostomy bag had been inserted, which caused her a lot of discomfort. She alleged that this was done without her consent and the hospital acted negligently.

Decision and Reasoning

The court dismissed the plaintiff's claim. It stated that the plaintiff has failed to prove her own case on evidence and balance of probabilities. The court relied on the hospital records, which pointed to the fact that the plaintiff absconded from the hospital against the doctor's orders and created a situation, which required the medical staff to conduct an emergency surgery and remove the uterus, which saved the plaintiff's life.

Decision Excerpts

"In cases of this nature, negligence is a requirement for delictual liability and the plaintiff must allege and prove that the defendant was negligent. It is not sufficient to allege negligence alone. The particular grounds of negligence must be detailed. It is an implied term of the contract that the medical practitioner who undertakes the treatment of the patient will exercise the reasonable skill and care of a practitioner in her or his field. In deciding what is reasonable, the evidence of qualified physicians is of greatest assistance; however, what is reasonable under the circumstances is a matter for the court to decide. Should the practitioner fail in his or her duty and the patient suffer damages in consequence thereof, the practitioner is bound to compensate the patient for the damages caused by the breach of contract. If a plaintiff relies on a breach of duty of care, (s)he must set out the facts that could or should have been foreseen by the defendant." (Para 23)

"On one hand, the plaintiff maintained without any proof that she was discharged by the hospital despite the serious condition she was in. On the other hand, the defendant maintained that she was not discharged by the hospital but in all probabilities absconded after she was prepared by Dr. Marokane for theatre to undergo the explorative laparoscopy which she had agreed to on 2 February." (Para 39)

"As indicated earlier, regardless of the pleadings, the plaintiff on her own version did not prove her case on a balance of probabilities. She could, expectedly so, not do so without being honest and telling the truth about what actually happened on 4 February after 05h05. I am bound by the objective facts to, ineluctably so, draw the only inference that I have drawn that the plaintiff absconded from the hospital against the doctor's orders and prescription for an operation between 2 and 4 February or as arranged. She created the dire condition in which she ended up in because the condition was left unattended between 4 February and 10 February, 6 days. I can find nothing more that the medical staff had to do beyond what they did on 11 February. The

action they took on 11 February saved the plaintiff's life. (Para 48)

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