



Cattanach v. Melchior

(2003) 215 CLR 1; (2003) 199 ALR 131; (2003) 77 ALJR 1312; [2003] HCA 38

Country: Australia

Region: Oceania

Year: 2003

Court: High Court

Health Topics: Child and adolescent health, Medical malpractice, Sexual and reproductive health

Facts

The respondents (plaintiffs at first instance), a married couple, decided not to have any more children. Mrs. M elected to have sterilization surgery (tubal ligation) performed by the appellant (defendant). Mrs. M told the appellant that her right fallopian tube had been removed and on examination that appeared to be correct, so appellant only performed the surgery on the left fallopian tube. The appellant negligently failed to warn Mrs. M of the risk that if she was wrong she may still become pregnant after the surgery. In fact, Mrs. M did become pregnant with a third child, born healthy and welcomed into the family.

The respondents brought action against the appellant and hospital for negligence. The trial court found that the defendant had negligently failed to warn of the risks associated with the sterilization procedure. Damages relating to a) the pregnancy and birth including pain and suffering as well as medical expenses; b) loss of consortium (the benefits of a family relationship) to Mr. M; and c) the costs of raising and maintaining the child until age 18, were awarded by the trial court and upheld on appeal.

The defendant was granted leave by the High Court on the third head of damages. Whether the plaintiffs ought to be able to recover for the costs of raising and maintaining the child was the sole issue in this appeal.

Decision and Reasoning

The Court was heavily divided, issuing six separate judgments for seven members of the bench. A four to three majority held that the defendant's appeal should be dismissed, effectively allowing the plaintiffs to recover the cost of raising and maintaining the child until age 18.

McHugh J and Gummow J dismissed the appeal on the ground that tort principles focused on compensation, deterrence, and fairness required recovery. Society's value of life and the family unit is not inconsistent with awarding damages. The head of damages focused on the financial cost, not the loss of enjoyment of life, so is inappropriate to offset the costs of raising the child with the love and joy resulting from the child. Callinan J's reasons were similar.

Kirby J dismissed the appeal on the ground that other options were all inadequate. The "child is a blessing" argument that advocates for no damages is based on moral views and not on legal principles, ignoring the monetary burden of a child. Limiting recovery to personal injury from pregnancy severs the causal link between pregnancy and its outcome. Awarding damages solely for disabled children draws a distinction that is arbitrary and offensive. Awarding damages discounted for the joys and benefits of a child compares two separate, distinct interests that should not be compared.

Dissenting, Gleeson J would have allowed the appeal on the ground that the claim was for pure economic loss but did not satisfy the requirements for establishing a new head of damages in that area, and that it treats a socially fundamental human relationship exclusively in financial terms. Gleeson also noted the respondents' claims implied an indeterminate liability as they were more than the costs for bare legal obligations but less than the full extent of costs one could reasonably conceive of.

Hayne J and Heydon J, in separate judgments, dissented and would have allowed the appeal on the ground that the law's assumptions about the value of a child's life and the need to put children's interests first were negated if parents could recover costs of rearing unplanned children. Recovery would permit the commodification of the child, and would obscure the emotional rewards of parenthood. Parents would be forced to emphasize that the burdens outweigh the benefits, to the detriment of the child's relationship with its

parents.

Shortly after this decision, the Parliament of Queensland amended its Civil Liability Act, 2003 to prevent a court from awarding damages for the financial burden of rearing a healthy child.

Decision Excerpts

“One of the grounds upon which "wrongful life" claims by children have been rejected is the impossibility of making a rational or fair assessment of damages⁴⁶. A similar difficulty is encountered in awarding damages for loss of expectation of life⁴⁷. The indeterminate nature of the financial consequences, beneficial and detrimental, of the parent-child relationship has already been noted. In deciding whether, in the contemplation of the law, the creation of that relationship is actionable damage, it is material to note that it is unlikely that the parties to the relationship, or the community, would regard it as being primarily financial in nature. It is a human relationship, regarded by domestic law and by international standards as fundamental to society. To seek to assign an economic value to the relationship, either positive or negative, in the ordinary case, is neither reasonable nor possible.” Gleeson J at para 38.

“To suggest that the birth of a child is always a blessing, and that the benefits to be derived therefrom always outweigh the burdens, denies the first category of damages awarded in this case; it also denies the widespread use of contraception by persons such as the Melchioris to avoid just such an event. The perceived disruption to familial relationships by, for example, the Melchioris' third child later becoming aware of this litigation, is at best speculative. In the absence of any clear and accepted understanding of such matters, the common law should not justify preclusion of recovery on speculation as to possible psychological harm to children.” -McHugh J and Gummow J at para 79

“the emotional and other benefits and burdens resulting from such a birth cannot be assessed comprehensively at the beginning of life. They are different in quality from the costs incurred in child-raising. They have nothing to do with the legal wrong for whose foreseeable consequences the tortfeasor must restore the parents. Legal principle requires that such joys and any like benefits of the unexpected birth be ignored in calculating the recoverable damages.” -Kirby J at para 175

“Despite the large measure of agreement by those judges whose conclusions the appellants would invoke, the matters relied on by them do not, with respect, commend themselves in law to me. The "windfall" argument is one of these. The denial of damages to the parents could equally be described as a windfall to the tortfeasor. To many, the abortion of a child or the offering of him for adoption, particularly within wedlock, would be more morally repugnant than the claiming of damages in respect of the rearing of the child. And there are many harsher truths which children have to confront in growing up than the knowledge that they were not, at the moment of their conception, wanted.” Callinan J at para 301.

“It is a fundamental assumption underlying many rules of the common law and many statutory provisions that, in general, where the interests of children collide with other interests, the interests of the children prevail; that parents have duties of a high order to advance the interests of their children; that those interests are best advanced by nurture in stable marriages; and that one of the interests of children which the law recognizes is the need to avoid the harm which may flow from publicity connected with litigation in which their interests are at stake.” - Heydon J at para 323

“The various assumptions underlying the law relating to children and the duties on parents created by the law would be negated if parents could sue to recover the costs of rearing unplanned children. That possibility would tend to damage the natural love and mutual confidence which the law seeks to foster between parent and child. It would permit conduct inconsistent with a parental duty to treat the child with the utmost affection, with infinite tenderness, and with unstinting forgiveness in all circumstances, because these goals are contradicted by legal proceedings based on the premise that the child's birth was a painful and highly inconvenient mistake. It would permit conduct inconsistent with the duty to nurture children.” - Heydon J at para 404