



Rees v. Darlington Memorial NHS Trust

[2003] UKHL 52

Country: United Kingdom

Region: Europe

Year: 2003

Court: House of Lords

Health Topics: Disabilities, Medical malpractice, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to family life

Facts

After conceiving as a result of a failed sterilization surgery, Karina Rees filed a claim of negligence against the Darlington Memorial NHS Trust (the Trust) to recover the costs of rearing her child.

Mrs. Rees suffered from a genetic condition that had left her almost completely blind. She believed that her disability meant that raising a child would be very difficult, and sought a sterilization procedure from the Darlington Memorial Hospital. She then underwent a sterilization operation which, unbeknownst to her, had been performed negligently. As a result, she conceived a healthy boy approximately a year after the procedure. She filed a claim to recover the costs of raising this child from the Trust. She failed before the High Court, but succeeded before the Court of Appeal. The Trust appealed to the House of Lords.

Decision and Reasoning

The Court held that the Trust would not be liable to pay Mrs. Rees for the costs for raising her child. It considered that there was no reason to depart from previous decisions ruling that parents could not recover damages for the cost of bringing up a healthy and normal child born as a result of medical negligence.

It also found that the policy considerations underpinning the previous decisions applied with equal force to the current case. These included an unwillingness to regard a child as nothing more than a financial liability; a recognition that even involuntary parenthood might bring rewards that could not easily be quantified or offset against the costs of raising the child; and a sense that awarding potentially very large sums of damages to the parents of a normal, healthy child from a National Health Service always in need of funding for pressing demands would rightly offend the community's sense of how public resources should be allocated.

However, the Court considered that the parent of a child born as a result of a negligently-performed vasectomy or sterilization, or negligent advice on the effect of such a procedure, was still the victim of a legal wrong. It therefore awarded Mrs. Rees a conventional award of £15,000 to mark the injury and loss, as well as damages for expenses occurred as a result of pregnancy and birth. Such an award was not intended to compensate, but to recognise the wrong done. Accordingly, subject to the award of £15 000, the Trust's appeal was allowed.

Decision Excerpts

“On the contrary, that the negligent doctor or, in most cases, the National Health Service should pay all the costs of bringing up the child seems to me a disproportionate response to the doctor's wrong. It would accord ill with the values society attaches to human life and to parenthood. The birth of a child should not be treated as comparable to a parent suffering a personal injury, with the cost of rearing the child being treated as special damages akin to the financially adverse consequences flowing from the onset of a chronic medical condition.” • Para. 16

“But this is not to say it is fair and reasonable there should be no award at all except in respect of stress and trauma and costs associated with the pregnancy and the birth itself. An award of some amount should be made to recognise that in respect of birth of the child the parent has suffered a legal wrong, a legal wrong having a far-reaching effect on the lives of the parent and any family she may already have. The amount of such an award will inevitably have an arbitrary character.” • Para. 17.