



Case 5551/2010

STS 5551/2010

Country: Spain

Region: Europe

Year: 2010

Court: Supreme Court

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

Facts

The appellant, a welder and a machine technician, went to the health care facility of Mutua Asepeyo for lumbosciatic pain caused by lifting a machine that day. He was treated with medication and rest, but did not improve. He was then diagnosed with degenerative disc disease and disc herniation, which was confirmed elsewhere. He consented to corrective surgery. After the surgery, he did not recover fully and suffered from erectile dysfunction, so he was declared permanently incapacitated. He brought suit against the hospital and the court sought to decide the financial liability of the hospital.

The trial court held that the appellant's consent absolved the hospital of any liability, especially because the informed consent document noted that "nerve damage during the surgical procedure" was a possible complication of surgery. The appellant appealed to the Supreme Court.

Decision and Reasoning

The Supreme Court held that the hospital was liable for his injury because the informed consent expressed the risk of nerve damage generally, rather than providing "precise and detailed information about the possible adverse consequences and serious after-effects that the surgical intervention caused him." Therefore, the lack of information deprived the appellant of the opportunity to decide for himself whether the benefit he desired was worth the risk involved.

Decision Excerpts

"With this lack of information, the appellant was deprived of avoiding surgery and of the right to decide whether it was convenient to undergo the considerable risky operation; those risks are proved by the injuries suffered by the patient." Page 4.

"Thus, we conclude that this lack of information involves a *lex artis ad hoc* infringement, which reveals an abnormal functioning of the sanitary service leading to Administration's financial liability due to damage attributable to the appellant as a consequence of the surgical intervention." Page 4.