

Court of Cassation

First Civil Chamber

Public hearing of Wednesday 7 October 1998

Appeal No.: 97-10267

Published in the bulletin

Appeal.

President: Mr. Lemontey, president

Advisor: Mrs. Delaroche, contributing advisor

General advocate: Mr. Sainte-Rose, general advocate

Advocates: SCP Vier and Barthelemy, SCP Coutard and Mayer, Mr. Vuitton, lawyer(s)

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Whereas, on April 3, 1985, the victim of a fall that caused a fracture of the second lumbar vertebra, Mrs. X...due to a persistent kyphosis, suffered February 3, 1987, in the morning an operation performed by Mr. Y..., surgeon at the Clinic of the Park, consisting of the surroundings of Hartchild; on a second time, this procedure was to be followed by a spinal graft; in the afternoon, disorders of her left eye manifested; as soon as he was aware, Mr. Y...came to the bedside of Mrs. X..., changed the prescribed therapy, and organized a consultation in ophthalmology emergency; a diagnosis of cavernous sinus thrombosis was confirmed; this condition has resulted in the permanent loss of function of the eye; invoking medical negligence in the post-operation monitoring on the part of the anesthesiologist Mr. Z..., surgeon, and the clinic staff that would not have required the immediate intervention of Mr. Y... or any other qualified person, Mrs. X...sought their liability; in the case on appeal, she claimed that Mr. Y...had breached his duty to inform by not warning her of the risk; the challenged judgment confirmed the absence of fault and dismissed all of Mrs. X's applications;

On the appeal taken in its two parts: (without interest);

But on the third part of the appeal;

Considered Article 1147 of the Civil Code;

Whereas, except for cases of emergency, of impossibility, or refusal of the patient to be informed, a doctor must give fair, clear, and appropriate information about the serious risks relating to procedures and proposed treatments, and he is not exempted from this obligation by the mere fact that the risks are only realized in exceptional cases;

Whereas in dismissing the demands of Mrs. X..., the judgment states that the information that must be given by the practitioner is required only for reasonably foreseeable risks, in this case, the complication of thrombophlebitis of the cavernous sinus is well known as very rare; the court deduced that the surgeon did not have to notify Mrs. X...;

Whereas, in so ruling, the Court of Appeal violated the aforementioned text;

FOR THESE REASONS, and without any need to rule on the fourth part of the claim:

NULL AND VOID, in all its provisions, the judgment delivered 26 September 1996 between the parties, by the Court of Appeal of Lyon; call, therefore, the case and the parties in the state where they were in before said judgment, and, to be done right, return in front of the Court of Appeal of Grenoble.

Publication: Bulletin 1998 I No. 291 p. 202

Challenged decision: Court of Appeal of Lyon, 26 September 1996

Titling and summaries: CONTRACTUAL LIABILITY – Duty to inform – Surgeon – Exceptional risk – Exemption information (no).

Except in cases of emergency, impossibility, or patient refusal to be informed, a physician is required to give fair, clear, and appropriate information regarding the serious risks associated with procedures and proposed care, and he is not exempted from this obligation by the mere fact that such a risk is realized in exceptional cases. Therefore, the appealed judgment opens itself up to risk, which states that the physician must give information only for reasonably foreseeable risks and, having concluded that the risk is very rare, the surgeon did not have to notify his client.

MEDICAL AND PARAMEDICAL PROFESSION – Surgeon – Contractual liability - Duty to inform - Extended – Exceptional risk

Jurisprudential precedents: CLOSER: First Civil Chamber, 1998-10-07, Bulletin 1998, I, No. 287, p. 199 (rejected), and the cited opinion.

Applied Texts:

Civil Code 1147