ACD (by her next friend B) v See Mun Li
[2009] SGHC 217

Case Number : Suit 62/2007, NA 26/2008

Decision Date : 25 September 2009

Tribunal/Court : High Court

Coram : Teo Guan Siew AR

Counsel Name(s) : N Srinivasan (Hoh Law Corporation) for the plaintiff; Willy Tay (Ari Goh & Partners) for the defendant

Parties : ACD (by her next friend B) — See Mun Li

Damages

25 September 2009

Teo Guan Siew AR:

Introduction

1 A six year old girl met with a road traffic accident as a result of which she sustained injuries to her head. Due to her young age, there is uncertainty as to whether she will develop a specific medical condition arising from the head injuries. In assessing the amount of damages that the girl is entitled to, should the court make an order allowing her to come back to court if and when this medical condition actually materialises? The present case involves this question of whether or not such a provisional order for damages should be made.

Background

2 The plaintiff, for whom this action was brought by her father as her litigation representative, was knocked down by a car driven by the defendant in August 2004. She was six years of age at the time of the accident, and sustained serious head injuries which caused her to suffer from *inter alia* a diabetic condition known as central diabetes insipidus, as well as a hormonal problem known as cortisol deficiency which inhibited her growth. Due to these medical conditions, the plaintiff requires constant medication including nightly injections of growth hormones.

3 Consent judgment was entered in respect of liability at 65% in favour of the plaintiff. When the matter came before me for assessment, the defendant did not dispute the medical evidence of the plaintiff's doctors, and counsel for the defendant chose not to cross-examine her doctors. No witnesses were called by the defendant. This could therefore have been a rather straightforward exercise of quantification of damages, but there was one main difficulty. As the plaintiff was only ten years old at the time of assessment, it was uncertain whether or not she would develop a specific medical condition, namely sexual hormonal deficiency. The evidence of the plaintiff's doctors was that this would only become clear when she reaches around 13 years of age, which is the normal age of puberty.

4 At the conclusion of the assessment proceedings, I made an award of damages in the sum of $203,705 ($132,409 at 65% liability) for the plaintiff's pain and suffering, loss of earning capacity, as well as her future medical and transport expenses, based on her *existing* medical conditions. In addition, I made a provisional order for damages, which gave the plaintiff the liberty to apply, within

the next five years, for further damages in the event that she does suffer from sexual hormonal deficiency. As both counsel informed me that this was the first time that such an order for provisional damages was made in Singapore (at any rate there was no reported local decision of the same), I decided to provide my written reasons for making such an order.

Provisional Damages

5 The court's power to make an order for provisional damages is provided under paragraph 16 of the First Schedule of the Supreme Court of Judicature Act (Cap. 322, 2007 Rev Ed) ("SCJA"), which states:

> **Provisional damages for personal injuries**
>
> **16**. Power to award in any action for damages for personal injuries, provisional damages assessed on the assumption that a contingency will not happen and further damages at a future date if the contingency happens.

6 Similarly, the Rules of Court (Cap. 322, R5, 2006 Rev Ed) provide as follows:

> **Order for provisional damages (O. 37, r. 8**)
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> **8**. – (1) The Court may, on such terms as it thinks just and subject to the provisions of this Rule, make an award of provisional damages if the plaintiff has pleaded a claim for provisional damages.
>
> (2) An order for an award of provisional damages shall specify the contingency in respect of which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

7 The provisions merely state that the court can make an order for the injured party to apply for further damages in the event that the *contingency* happens, with no guidance as to what amounts to such a contingency and when it would be appropriate for such an order to be made. I was also not referred by counsel to any local decisions which interpreted these provisions. That being the case, it is instructive to examine the position under English law.

8 The starting point is that there should be finality in the administration of justice, such that as a general rule damages should be assessed once and for all. Lord Pearce in *Murphy v Stone-Wallwork (Charlton) Ltd* [1969] 1 WLR 1023 observed (at 1027):

> Our courts have adopted the principle that damages are assessed at the trial once and for all. If later the plaintiff suffers greater loss from an accident than was anticipated at the trial, he cannot come back for more. Nor can the defendant come back if the loss is less than was anticipated. Thus, the assessment of damages for the future is necessarily compounded of prophecy and calculation. The court must do the best it can to reach what seems to be the right figure on a reasonable balance of probabilities…Although periodic payments and a right of recourse whenever circumstances change might seem an attractive solution of the difficulty, yet they, too, have serious drawbacks *such as an unending possibility of litigation*… [emphasis added]

9 However, it became clear in England that this general rule cannot be applied immutably to all

cases, particularly as regards personal injuries cases. As the court noted in *Adan v Securicor Custodial Services Ltd* [2004] EWHC 394, there developed a growing school of thought that the "once and for all" principle of assessment (if applied rigidly) "is too rough and ready and can lead to considerable hardship and injustice", in the sense that "later events often mean that claimants are over or under-compensated having regard to their true needs". In *Deeny v Gooda Walker Ltd* [1995] 4 All ER 289, Philips J commented:

> In a personal injury case, it may well be in the interests of justice that a final award of damages should not be made until sufficient time has elapsed for a reliable prognosis of the plaintiff's medical condition.

10 These considerations form the rationale behind the creation of a statutory exception to the finality principle, in the context of personal injury cases. Section 32A of the UK Supreme Court Act 1981 provides as follows:

> (1) This section applies to an action for damages for personal injuries in which there is *proved or admitted* to be a *chance* that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some *serious deterioration* in his physical or mental condition.
>
> (2) …provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to award the injured person – (a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and (b) further damages at a future date if he develops the disease or suffers the deterioration.
>
> [emphasis added]

11 While s 32A is similar to our paragraph 16 of the First Schedule of the SCJA in that both provisions give the court the power to make a provisional order as to damages, there are a few important differences. First, s 32A refers to a "chance" rather than a "contingency". Second, s 32A requires the "chance" to be proved or admitted, whereas paragraph 16 merely refers to "if the contingency happens". Third, the triggering event for the right to seek further damages under s 32A is the development of a "serious disease" or the "serious deterioration" of the claimant's physical or mental condition. Our paragraph 16 does not describe what is the nature of the "contingency" before there can be an entitlement to return to the court for another award of damages.

12 Section 32A has been the subject of several English decisions. In *Willson v Ministry of Defence* [1991] 1 All ER 638 ("the *Willson* case"), the claimant who was an employee in a naval dockyard injured his ankle during work. The medical evidence was that there would be degeneration of his ankle joint and it was possible that he would develop arthritis as a result. In his action seeking damages from his employer, the claimant applied for an award of provisional damages, contending that if he develops arthritis to the extent that he requires a surgery or has to change his employment, that would occasion a further award of damages. Scott Baker J (at 642) considered the meaning of the word "chance" in s 32A:

A chance, it will be appreciated, is not defined in s 32A. This has been considered in a number of previous cases. It seems to me that the legislature has used a wide word here and used it deliberately…it can cover a wide range between, on the one hand, something that is de minimis and, on the other hand, something that is a probability. In my view, *to qualify as a chance it must be measurable rather than fanciful*.

[emphasis added]

13 The judge accepted that the claimant had successfully shown that there was such a "chance" that he will develop arthritis to the extent that he requires surgery or has to look for another job. In particular, the judge's view was that "[h]owever slim those chances may be", they are still measurable within the meaning of the section. However, unfortunately for the claimant, he failed to clear the next hurdle of showing that the arthritis would constitute a "serious deterioration" in his physical condition. Scott Baker J explained at 642:

In my judgment, what is envisaged here is something beyond ordinary deterioration. Whether deterioration is serious in any particular case seems to be a question of fact depending on the circumstances of that case, including the effect of the deterioration upon the plaintiff…

…Osteoarthritis is a progressive condition…I am not satisfied that it is established that deterioration to the point of surgery being required falls within the definition of serious deterioration in the circumstances of this case. It seems to me to be simply an aspect of a progression of this particular disease.

…it seems to me very much the same approach can be applied as with regard to the requirement of surgery…

14 Further in his judgment, Scott Baker J elaborated (at 644):

The general rule in English law is that damages are assessed on a once-and-for-all basis. Section 32A of the 1981 Act creates a valuable statutory exception. In my judgment, the section envisages a *clear and severable risk* rather than a continuing deterioration, as is the typical osteoarthritic picture.

…there should be some *clear-cut event* which, if it occurs, triggers an entitlement to further compensation.

[emphasis added]

15 In reaching his conclusion that the claimant should not be entitled to provisional damages, the judge also took into account "the degree of risk and the consequences of the risk". Also, he appeared to have engaged in a balancing exercise, when he opined that the court needs to weigh "the possibility of doing justice by a once-and-for-all assessment against the possibility of doing better justice by reserving the plaintiff's right to return".

16 In the earlier case of *Patterson v Ministry of Defence* [1987] CLY 1194, a very similar view was taken as to the requirement of a clear-cut event. The court said:

> …generally speaking, it appears to me desirable to limit the employment of this valuable new statutory power to cases where the adverse prospect is reasonably clear-cut and where there would be little room for later dispute whether or not the contemplated deterioration had actually occurred.

17 In conducting the balancing exercise as envisaged by Scott Baker J in the *Willson* case, the defendant's position must of course be taken into account. In this regard, the case of *Adan v Securicor Custodial Services Ltd* is helpful. The facts there were somewhat unusual, in that the attempt at seeking provisional damages was premised on the possible *improvement* as opposed to deterioration of the claimant's mental condition. This meant that s 32A of the English Act could not apply. Be that as it may, the following general observation (at [18] and [19] of the decision) on the effect of a provisional order of damages on the defendant (or his insurers) remains pertinent:

> Both counsel drew my attention to the overriding objective and in particular Mr Brown [counsel for the defendant] reminded me that an important aspect of it is that of ensuring that cases are dealt with "expeditiously and fairly". That is, of course, closely linked to what is, in effect, a presumption in favour of finality to which his clients would be entitled, save insofar as Parliament has specifically provided to the contrary, or other overriding considerations come into play.
>
> I need to bear in mind that the order Mr Langstaff [counsel for the claimant] seeks would have the consequence that the defendant's insurers would remain *exposed to an uncertain liability*, but potentially measured in seven figures, *for an indefinite period of time*. That seems to me to be inherently undesirable and oppressive.
>
> [emphasis added]

18 Hence, the prospect of uncertain liability of the defendant for an unknown period of time would appear to be a factor that the English courts would take into account in determining whether the discretion should be exercised in favour of making an order for provisional damages.

19 In *Cowan v Kitson Insulations Limited and others* [1991] 1 PIQR Q19, which involved a claim for damages for injuries that resulted from exposure to asbestos, the claimant had a 10 to 15 percent risk of asbestosis, 8 to 10 percent risk of mesothelioma, and 10 to 15 percent risk of lung cancer. Although it was open to the claimant to apply for an order of provisional damages in respect of those medical risks, he however opted for a final assessment as at the date of trial. The defendant's counsel urged the court not to overcompensate the claimant for his future loss of earnings, since it was the claimant's own decision not to defer the assessment and wait to see if he would in fact suffer from those ailments. This line of argument was roundly rejected by the court, which took the view that the claimant ought not to be prejudiced simply because he chose not to ask for a provisional order. Instead, the court would do its best to factor in the risks of the diseases in arriving at a fair award as at the present date of assessment. The court commented as follows:

There is now provision, if the plaintiff so wishes it, for provisional damages to be awarded, discounting the risks altogether, leaving the plaintiff free to come back to court if in fact one or more of those risks develops into reality. *The plaintiff does not wish to do that, and I entirely respect his decision*. It is his and his alone, and he wants to put this matter entirely behind him, and in my view he is entitled to adopt that attitude, and the court will assess as best it can what is proper compensation now for the risks that may never eventuate.

…

In dealing with the question of potential future loss of earnings Mr Bowers [counsel for the defendant] urged me to be astute not to overcompensate the plaintiff because the plaintiff has chosen to go ahead today and ask for a final assessment. In my view, *the plaintiff is not to be disadvantaged in any way by seeking a final assessment now. The court should not be astute to help the defendants, who after all are at fault* and their fault is the reason why Mr Cowan falls to be compensated.

[emphasis added]

20 A summary of the applicable principles, as distilled from the English cases above (principally the *Willson* case), is as follows:

(a) The "chance" under s 32A must be measurable rather than fanciful.

(b) There must be a clear and severable risk rather than continuing deterioration, ie there must be a clear-cut event that would trigger the entitlement to apply for further compensation.

(c) Account must be had to the degree of risk and the consequences of the risk, ie how severe the nature of the illness or deterioration is and its detrimental effect on the claimant.

(d) A balancing exercise needs to be undertaken to determine whether justice is better served by a once-and-for-all assessment or by giving the claimant the liberty to return to apply for further damages in the future.

(e) A claimant should not be prejudiced if he decides not to utilise the option of applying for a provisional order: the court would do its best in the circumstances to consider the risks of future medical complications in arriving at an award for immediate damages.

21 It would appear to me that the above principles are sensible and broadly speaking, ought to be equally relevant in deciding whether or not a provisional order for damages should be made in the local context under paragraph 16 of the First Schedule of the SCJA and O 37 r 8 of the Rules of Court. The only caveat is that in applying these principles, the court should have regard to the differences in wording of our provisions from their UK equivalent. To the above list, I would add another factor which the court should consider in deciding whether to exercise its discretion to grant a provisional order, and that is the period of time that the provisional order will have to remain in effect. In conducting the balancing exercise, it is clearly pertinent to take into account whether the defendant would be exposed to potential liability for an indefinite period of time (as the court's observations in *Adan v Securicor Custodial Services Ltd* suggest). If a suitably restrictive period of time could be set by the court, within which the plaintiff must make his further application for damages, any prejudice

caused to the defendant in terms of uncertainty as to his extent of liability will be minimised.

Application to Present Case

22 Before applying the above principles to the facts of this case, a threshold objection raised by the defendant's counsel must be addressed, namely that the plaintiff failed to sufficiently plead what the contingent event is which will trigger the award for provisional damages. In this respect, it is pertinent to set out the relevant parts of the Statement of Claim, which read:

> 5 In respect of the Plaintiff's severe head injuries, the Plaintiff humbly prays for an award of provisional damages, pursuant to Order 37 of the Rules of Court, to be assessed in view of the future contingencies between the periods from now till 2076, until the Plaintiff reaches the age of 75. Particulars of the contingencies for the provisional damages are as follows:
>
> **Particulars of Contingencies for Provisional Damages**
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> 6 The Plaintiff is a young girl aged 7. Due to the severe brain injury sustained from the Accident, the Plaintiff has been diagnosed with central diabetes insipidus and hypopituitarism (hormonal deficiencies). In respect of the central diabetes insipidus and the hormonal deficiencies, the Plaintiff herein requires the following ongoing medical treatment:
>
> (i) Growth hormones treatments up till the age of 14 and/or;
>
> *If the onset of puberty is delayed as a result of the aforementioned hormonal deficiency, compulsory sex hormone therapy will be administered*.
>
> (ii) Cortisol deficiency requiring oral steroid replacement therapy for life.
>
> (iii) Regular medical reviews and examinations, including Neurology and Endocrinology consultation.
>
> (iv) Other further medical treatments in respect of future consequential detrimental medical developments.
>
> 7 Consequent disability and financial losses, which may arise from such medical treatments.
>
> [emphasis added]

23 There is force to the submission of the defendant's counsel that the above paragraphs of the Statement of Claim are too vague and do not precisely identify the "contingency" that is sought to be relied upon to invoke the right to provisional damages. In particular, I agree that it is insufficient to state the contingency merely by reference to "future consequential detrimental medical developments". One must plead with specificity the exact medical condition, which if it develops in the future, is to form the triggering event to apply for further damages. There are indeed some difficulties with the pleading: cortisol deficiency cannot possibly be the contingency relied upon since it is already a pre-existing condition in the plaintiff, and there is no attempt at all to state what is the neurological or endocrinological condition that the plaintiff may develop.

24 The pleadings can be improved upon, but I do not think that the defects should be fatal to the

plaintiff's claim for provisional damages. It is possible to identify one specific contingent event from the pleadings, namely the plaintiff's inability to reach puberty at the usual age due to her sexual hormonal deficiency (although even for this, there has been a failure to expressly state that the sexual hormonal deficiency is the precise contingency within the meaning of the relevant statutory provisions). Fortunately for the plaintiff, as will be seen shortly, the medical evidence indeed indicates that this is a distinct medical complication that the plaintiff may well develop in the future, but which for now remains uncertain. While my view is that the plaintiff should not be shut out merely because of the state of her pleadings, I must add the more general observation that where provisional damages are sought, claimants will be well-advised to plead with clarity and specificity the exact medical condition or disease that is to form the contingent event which gives rise to the right to seek further compensation.

25 In my opinion, the sexual growth deficiency is a clear and severable risk as opposed to mere deterioration or progression of a particular pre-existing illness. If the plaintiff is unable to reach puberty, that would constitute a clear-cut event triggering the right to seek further damages under a provisional damages order. Although the plaintiff is already suffering from some hormonal problems, the medical evidence indicates that the sexual hormonal deficiency would be in the form of a separate and distinct medical condition that she may develop. At this juncture, it is apposite to set out the medical evidence. Dr Goh Siok Ying, the treating doctor, stated in both her affidavit of evidence-in-chief ("AEIC") and her medical report as follows:

> [The plaintiff] is likely to require growth hormone at least till the age of 14 years old. She is likely to require the rest of the medications for life. *If she has delayed puberty as a result of hormonal deficiency secondary to the accident, she may require female hormone therapy for life*.
>
> [emphasis added]

26 In a subsequent report, Dr Goh stated further:

> She will also be closely monitored for evidence of spontaneous puberty at the appropriate age (by 13 years of age). If she has no evidence of puberty by then, she may need to undergo further tests as well as be started on oral female sex hormones. She may require lifelong sex hormone therapy as well.

27 Similarly, the neurologist Dr Ho King Hee opined as follows:

> Given the reappearance of central diabetes insipidus and of an impaired cortisol and growth hormone responses, it is clear that [the plaintiff] has sustained persistent anterior as well as posterior pituitary dysfunction as a direct result of brain trauma at the time of the accident. Diabetes insipidus is a known consequence of head injury and occurs acutely in about one quarter of head injured patients. Hypopituitarism with involvement of cortisol and growth hormone secretion is also a well known phenomenon following head injury. *It is possible that she will not have a normal onset of menses or of normal fertility if the sex hormone secretion is also impaired*. The latter problem would only become obvious at the time of normal menarche.
>
> [emphasis added]

28 It is thus clear that there is the *possibility* that the plaintiff may suffer from sexual hormonal

deficiency arising from her head injuries, and this much was not disputed by the defendant, who accepted the medical opinions of the plaintiff's doctors. The defendant's main objection was that this is speculative, on the basis that such possibility was not expressed in terms of a percentage of the likelihood that such sexual deficiency will take place, and in particular that the doctors failed to produce any empirical evidence to show the probability of such a condition developing in a case like the plaintiff's. The first thing to note is that the defendant herself had chosen not to call her own medical experts to show that it is unlikely that such sexual deficiency will take place. Since the defendant was not challenging the medical evidence adduced by the plaintiff, counsel for the defendant decided not to cross-examine the plaintiff's doctors. The question of what was the percentage probability of sexual hormonal deficiency developing was therefore never put to the doctors in court. Of course, it may be said that the affidavits of the doctors (and their annexed reports), being their written evidence-in-chief, ought to be comprehensive as to the evidence that the plaintiff wants to bring before the court. But doctors preparing medical reports, even if these are for the specific purpose of being used in court proceedings, cannot be expected to be keenly aware of the legal requirements, one of which in this case was contended by the defendant's counsel to be that the likelihood of the medical condition in question ought to be stated more precisely with supporting empirical data. In any event, it must be remembered that the law on provisional damages in Singapore does not appear to be well-established, with a dearth of local case law, such that what exactly is the nature of the medical evidence that is required to justify such an order being made would not have been clear.

29 In determining whether the risk is measurable and not fanciful in the present case, what needs to be borne in mind is that there are two specialist doctors (whose medical evidence were not challenged) stating the possibility that the plaintiff may not have spontaneous puberty. Moreover, the sexual hormonal deficiency is clearly related to the growth hormone deficiency which the plaintiff is already suffering from, as they can both be attributed to the injury to her pituitary gland (as Dr Ho's medical evidence suggests). It should also be pointed out that the threshold for the plaintiff to satisfy is clearly not a high one. In the *Willson* case, as mentioned above, the judge stated that the chances are measurable no matter how slim they are. And in *Munkman on Damages for Personal Injuries and Death* (LexisNexis UK, 11th ed., 2004), there is an account of an unreported English decision (*O'Kennedy v Harris*, 9 July 1990) where a provisional order for damages was made even though there was only a 0.25% risk of the claimant developing epilepsy. Taking these into account, I do not think that the contingency in our present case, *ie* of the plaintiff not reaching spontaneous puberty, can be said to be fanciful.

30 It is also worth highlighting again the difference in wording between our local provisions and the English s 32A, in that we have no requirement that the contingency must be "proved" or "admitted". As Professor Pinsler observed, this indicates that in the Singapore context, the court should take a broad view of the circumstances in deciding whether provisional damages should be awarded (*Singapore Court Practice 2006*, LexisNexis 2006, at paragraph 37/7-10/3).

31 Furthermore, it should be apparent that the circumstances under which the court refused to award provisional damages in the English cases referred to by the defendant's counsel can be easily distinguished. In the *Willson* case, no provisional order for damages was made because the court found that the development of arthritis to the extent that surgery is required (the trigger event relied upon by the claimant there) was in the nature of a progression of an existing condition rather than a serious deterioration which constituted a clear and severable risk. In contrast, my opinion is that the plaintiff's possible sexual hormonal deficiency is a clear-cut and independent medical condition that she may suffer in the future. As for *Cowan v Kitson Insulations Limited and others*, we have seen that it was a case where the claimant himself had decided not to pursue the claim for provisional damages. In fact, the decision is typically cited for the proposition that the claimant who chooses not

to claim for provisional damages and instead opt for a once-and-for-all assessment ought not to be penalised for taking that option (see *McGregor on Damages* (London: Sweet & Maxwell, 17 ed., 2003)). And *Adan v Securicor Custodial Services Ltd* is a very different case where the claimant was seeking a provisional order for damages in the event that his mental condition *improves*, which therefore fell outside the operation of the statutory exception to the finality principle.

32 In our present case, the consequence of the risk of sexual hormonal deficiency materialising is clearly severe. The plaintiff would most likely require sexual hormonal therapy for the rest of her life, and furthermore, her child-bearing ability could be affected as well. Of course, we need to balance the interest of the plaintiff in being able to return to the court in future with the defendant's concern that there should be finality to this litigation. In particular, counsel for the defendant relied on the observations made in *Adan v Securicor Custodial Services Ltd* that it is oppressive for a defendant and his insurers to be subject to indeterminate liability for an indefinite period of time. We have just noted that the court's comments in that case were made in the quite different context where the statutory exception in s 32A to the finality principle was not even applicable. But more importantly, the English court's concern does not feature in our present case. The contingent event is whether or not the plaintiff would suffer from sexual hormonal deficiency, and the medical evidence is clear that this would be known when the plaintiff reaches around 13 years of age as it would then become clear whether she is able to reach spontaneous puberty. The plaintiff is now 10 years old. Even being conservative, the period of time for her to make a claim for further damages would at most be five years. Correspondingly, if a provisional order is made, the defendant (or her insurers) would not be exposed to uncertain liability for an extensive period of time. It must also be noted that even if the provisional order is made, the burden remains on the plaintiff to subsequently prove, in the future, that the contingency arose and was caused by the accident: see *Fairchild v Glenhaven Funeral Services Ltd and Others* [2002] 1 WLR 1052. On the other hand, if the provisional order is refused, it would mean that if the plaintiff does in fact develop sexual hormonal deficiency, she would be shut out and denied of any remedy. She would not be able to obtain compensation to pay for expensive sexual hormonal therapy and other related medical treatments, even though these are necessary only because of the defendant's negligent act. The balance, in my view, clearly lies in favour of making a provisional order in the circumstances of this case.

33 Finally, I deal with the defendant counsel's submission that since under s 24 of the Limitation Act (Cap. 163, 1996 Rev Ed) the 3-year time frame will start to run only when the plaintiff ceases to be a minor and turns 21, she effectively has up to 2022 to bring this action and she should therefore have sued much later when there is a clearer picture of her medical condition. The plaintiff met with the accident way back in 2004 when she was only 6 years old. If counsel for the defendant is correct, she would have to wait for around 8 to 10 years before commencing action, because only then would she know with certainty whether she will suffer from sexual hormonal deficiency. But in the meantime, she clearly is suffering from other medical conditions such as the central diapetes insipidus and cortisol deficiency, for which she requires constant and expensive medication. Surely the plaintiff cannot be faulted for bringing an action now to obtain damages in respect of the injuries that she has already sustained, not least because she would need the damages awarded to pay for her medical bills which are being incurred on an ongoing basis.

34 For the above reasons, my view is that this is an appropriate case where an order for provisional damages ought to be made. Since the contingent event is the onset of spontaneous puberty, and we would know whether it takes place within the next couple of years, a suitable time limit should be imposed for the plaintiff to seek further damages under the order for provisional damages.

35 I therefore ordered the following:

(a) Judgment for the plaintiff for immediate damages in the sum of $132,409 (being 65% of the total amount of $203,705), on the assumption that the plaintiff would not develop sexual hormonal deficiency leading to her inability to reach spontaneous puberty (the specific contingency).

(b) If the plaintiff does at a future date develop the specific contingency, she shall be entitled to make an application for further damages. Such application shall be made within 5 years of this order.