

THE HIGH COURT

2000 No. 4538 P

BETWEEN

MARGARET O'CONNOR

PLAINTIFF

AND

MICHAEL MURPHY AND THE SOUTHERN HEALTH BOARD

DEFENDANTS

Judgment delivered by Mr. Justice de Valera on the 31st day of January, 2008

1. In this matter the plaintiff Margaret O'Connor has sued the defendants Michael Murphy, a Consultant Orthopaedic Surgeon and the Southern Health Board as being the body at all material times, controlling, managing, maintaining and supervising Tralee General Hospital and the medical and surgical practices carried out therein.

2. On the 27th November, 1997, the first named defendant carried out a surgical procedure, the fitting of an artificial right hip joint to the plaintiff at the second named defendant's hospital at Tralee, known as Tralee General Hospital (this operation will be referred to hereinafter as the first operation).

3. It is plaintiff's contention that due to the negligence and breach of duty of the first named defendant the artificial joint inserted into the femoral shaft in her right leg was misaligned and the cortex of the right femoral shaft was perforated, allowing the cement used to fix the artificial joint in the femoral shaft to extrude through this perforation.

4. Subsequently, having complained to the first named defendant and attended him on a number of occasions, the plaintiff was readmitted to Tralee General Hospital on the 18th January, 1999, when the first named defendant carried out another operation (hereinafter referred to as the second operation).

5. The plaintiff states that she continues to suffer from pain and disability and subsequently on the 27th June, 2000 had a "strut allograft" procedure on the 27th June, 2000, (the third operation).

6. As a result of the negligence which the plaintiff alleges against the first and second defendants the plaintiff claims damages for the pain suffering and disability occasioned to her.

7. The defendants deny that the first named defendant was negligent in the manner in which he carried out the insertion of the artificial joint, into the plaintiff's right femur. They also deny that the failure, conceded by the first defendant, to inspect the cortex of the femur subsequent to the insertion of the artificial joint to ensure that no perforation had taken place, was negligent. The defendants also deny that the failure to alert the plaintiff to the true purpose of the second operation was negligent and in breach of the defendants' duty to the plaintiff and claim that even had the plaintiff been fully advised as to the purpose of the second operation she would have agreed to its taking place.

8. The defendants further deny that the misalignment of the artificial joint was of sufficient significance to warrant further surgery and that the pain and disability claimed by the plaintiff was not as a result of either the perforation or the misalignment and further that the strut allograft operation, the third operation, was not necessary to alleviate the plaintiff's complaints.

The first operation

9. I am satisfied, on the balance of probability and on the evidence adduced before me that the first named defendant was negligent in the manner in which he carried out this procedure and, further, in not insuring that no perforation had taken place by an inspection of the cortex immediately after reaming, in allowing the fixing cement to extrude through the perforation in the cortex and in fixing the artificial joint in a misaligned position.

10. In coming to this conclusion I have considered the first defendant's own evidence and the evidence of the only witness called in his behalf, Mr. Sheehan.

11. I have considered the evidence given on behalf of the plaintiff by Mr. Jago, Mr. Harris and Mr. Lambe that in the circumstances where the plaintiff had a narrow canal in her right femur which required reaming to allow the insertion of the stem of the artificial joint (a procedure which was within the competence of the first Named defendant), the use of a guide wire was desirable. It is common case had such a guide wire been used it is almost impossible that perforation of the femoral cortex would have occurred.

12. Even if there was no negligence in the manner in which the bone canal was reamed, I am satisfied, again accepting the evidence of the plaintiff's expert medical witnesses that an inspection of the exterior surface of the femur should have taken place (and the first defendant concedes this in his evidence). I am also satisfied that because of the eccentric drilling or reaming, the misalignment of the artificial joint could and should have been detected by the first defendant which inevitably would have led to the conclusion that there had been a deviation from the correct reaming path.

The second operation

13. The first defendant did not disclose to the plaintiff the true purpose of the second operation which he recommended to her and carried out. In the circumstances this was, and remains in principle, unacceptable. However, having considered the evidence particularly of the plaintiff and the submissions made to me on this point I am satisfied that even had the true purpose of this procedure been made known to the plaintiff she would have agreed to undergo it, despite the fact that had the first operation been properly carried out this second operation should not have been necessary.

The third operation

14. On the 27th June, 2000, the plaintiff underwent a third operation on her right hip, described as a "strut allograft" procedure. As far as the plaintiff is concerned this operation has been a successful attempt to relieve the most severe symptoms arising from the first, and probably second, operations. I am satisfied on the evidence that this third operation was necessitated by the failure of the first and second operations to alleviate the plaintiff's problems and had the first operation been carried out correctly neither the second nor third operation would have been necessary.

Causation

15. I am satisfied that the pain and suffering, and disability, suffered by the plaintiff since the first operation on the 28th November,

1997, is as a direct result of the defendant's failure to properly carry out the artificial hip operation and that this was due to the negligence of the first named defendant. Both the plaintiff and her expert witnesses have given evidence in this regard, which I accept. Mr. Sheehan, for the defendants, does not accept this view but, on the balance of probabilities, I am persuaded that the plaintiff's contention is correct.

Damages

16. I am satisfied that the pain and suffering which the plaintiff has suffered and continues to suffer is as a result of the perforation of the cortex of her femur, the extrusion of the cement and particularly the misalignment of the artificial hip joint in the first operation. The plaintiff had to undergo two unnecessary surgical procedures (the second and third operations) and not until the third operation, was the cause of her pain properly addressed.

17. The plaintiff is entitled to damages for pain and suffering to date in the sum of €100,000.

18. The medical evidence is that the plaintiff will continue to suffer from pain into the future and I am also satisfied that the future revision surgery which, even had the first operation been entirely successful would be required in the future has been brought forward somewhat and the appropriate amount of damages taking this into consideration for future pain and suffering is €50,000.

19. The plaintiff has not claimed any special damage.