

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION PRETORIA)**

CASE NO: Y63356/19

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| (1) | REPORTABLE: NO/YES |
| (2) | OF INTEREST TO OTHER JUDGES:
NO/YES |
| (3) | REVISED |

05 MAY 2022

In the matter between:

I M[...] obo L M[...]

PLAINTIFF

And

MEMBER OF THE EXECUTIVE COUNCIL FOR

HEALTH, GAUTENG PROVINCIAL GOVERNMENT

DEFENDANT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge or his/her secretary. The date of this judgment is deemed to be 05 MAY 2022.

JUDGMENT

MAUBANE AJ

INTRODUCTION

1. This is a claim for delictual damages resulting from medical negligence in that on the 16th June 2014, the plaintiff gave birth to baby, L[...], at Pholosong hospital by means of a natural vaginal delivery. The plaintiff was earlier admitted for monitoring, assessment and management of her labour process, the condition of her unborn baby, L[...] and for the delivery of the baby.

2. The plaintiff alleges that the defendant, through Pholosong hospital medical practitioners and nursing staff who were responsible for the management of the plaintiff's labour process and for the monitoring, assessment, and treatment of her baby L[...] before, during and after his birth, were negligent in the following respect:
 - 2.1. Failed to properly monitor, assess, and manage the labour process of the plaintiff and the condition of her unborn baby, L[...],
 - 2.2. Failed to deliver her baby and failed to properly and timeously deal with complications which occurred during the plaintiff's labour process and delivering her baby properly and timeously.
 - 2.3. Subjected plaintiff and her baby L[...] to suboptimal obstetric care and management by:

- 2.3.1. Failing to adequately monitor and / or respond to baby
L[...]’s foetal heart rate during the active phase of the plaintiff’s labour and especially after administering syntocinon to the plaintiff;
- 2.3.2 Failing to adequately monitor, assess and record maternal observations during the active phase of the plaintiff’s labour;
- 2.3.3 Failing to monitor, auscultate and record the foetal heart rate of the plaintiff’s unborn baby before, during and after contractions at half- hourly intervals;
- 2.3.4 Failing to record the progress of the plaintiff’s labour correctly and
adequately on the partogram, which was incomplete and constituted a substandard reflection of labour;
- 2.3.5 Decided to augment the plaintiff’s labour by administering Syntocinon when it was dangerous and contra-indicated to do so and without performing adequate cardiotocograph monitoring whilst administering Syntocinon;
- 2.3.6 Failed to ensure that specific prerequisites for administration of Syntocinon were adhered to and complied with and recorded;
- 2.3.7 Failed to consider the extremely poor progress of the plaintiff’s second stage of labour due to a probable big baby and to consider the presence of a non-reassuring foetal condition and to take timeous action to deal with these complications:
- 2.3.8 Failed to take timeous steps to expedite delivery of the plaintiff’s baby by means of an emergency caesarean section or any other expedited form of delivery and failed to take all reasonable steps

to prevent the plaintiff's baby, L[...], from suffering birth asphyxia;

2.3.9 Failed to continuously monitor and record baby L[...]'s foetal heart rate prior to and up to his birth by means of cardiotocograph under circumstances where the medical and nursing staff were aware, alternatively, should have been aware that the second stage of labour was prolonged, the baby was big and Syntocinon was administered;

2.3.10. Failed to appreciate that the presence of foetal distress during the prolonged second stage of the plaintiff's labour would probably result in baby L[...] being born in a poor and acidotic state requiring specialist resuscitation by a specialist pediatrician and or other suitably qualified medical practitioner and failed to ensure that a specialist pediatrician and / or qualified medical practitioner was present at the birth of the baby to properly resuscitate baby L[...] by:

2.3.10.1 Failing to keep and maintain proper medical and nursing records of baby L[...]'s clinical condition, care, and management during post-natal period;

2.3.10.2 Failing to prevent baby L[...] from suffering hypoxic-ischemic brain injury when they could and should have done so, and,

2.3.10.3 Failing to carry out their aforesaid duties with care, skill and diligence that could reasonably be expected from medical practitioners and nursing staff in their position.

3. The plaintiff alleged that because of the negligent breach of the respective duties of the defendant, the medical staff and the nursing staff at the defendant 's hospital, the following happened:

3.1. The plaintiff and baby L[...] were subjected to suboptimal obstetric management of her labour process;

3.2. Baby L[...] suffered an acute profound hypoxic-ischemic insult to his foetal brain which resulted in brain damage, as a consequence of which he suffered neonatal encephalopathy; and

3.3. Baby L[...] suffered permanent severe brain damage, manifesting as cerebral palsy, epilepsy, and severe developmental delay. It is further alleged by the plaintiff that because of severe brain damage and the sequelae thereof, which the plaintiff's baby, L[...] sustained;

3.3.1. He was hospitalized and will have to be hospitalized henceforth;

3.3.2. He received medical treatment and will have to be hospitalized;

3.3.3. He is and will be permanently disabled to the extent that he will require permanent assistance by skilled personnel;

3.3.4. He has suffered and will suffer from various communication difficulties;

3.3.5. He has required care giving from the time of his birth which was

rendered to him by the plaintiff, and will require full time care giving for the rest of his life;

3.3.6. He is permanently disabled to such an extent that he will

require medical devices and related equipment on a permanent basis;

3.3.7. He is permanently disabled from managing his own affairs with the result that a curator bonis would have to be appointed for him, alternatively, a trust would have to be established for him with a trustee to manage his financial affairs and provide for his needs for the rest of his life;

3.3.8. He will experience a loss of income capacity in future as he will never be able to earn an income;

3.3.9. He experienced a loss of amenities and will in future experience such loss, and;

3.3.10. He experienced pain, suffering, discomfort, and psychological trauma and will also in future, experience pain, suffering, discomfort, and psychological trauma.

BACKGROUND

4. Initially, as per summons issued by the plaintiff on the 23rd August 2019, an amount of R21 016 000,00,00 was claimed. The matter came before court on the 25th May 2021 whereon, amongst others, the following order was made:

4.1. The issue of liability and quantum in respect of the plaintiff's claim on behalf of J[...] L[...] are separated in terms of the provisions of Rule 33(4) of the Uniform of Court;

4.2. The defendant is liable for and shall compensate Plaintiff for 100% of the proven or agreed damages the plaintiff's minor son, L[...] suffered as a result of the monitoring, assessment and management of the plaintiff's labour and delivering of L[...] on the

16th June 2014 by the defendant's nursing staff and medical staff at the Pholosong hospital, resulting in L[...] suffering severe brain damage manifesting as inter alia microcephalic mixed cerebral palsy, complicated by global developmental delay, intellectual disability, symptomatic epilepsy and pseudo bulbar palsy.

5. As a result of the separation of issues and with reference to the above referred court order, the quantum matter was set down for hearing as a special trial. The matter was allocated to me, and trial was set to commence from 11th April 2022 to 5th May 2022. When the trial commenced on the 11th April 2022, both parties' counsels informed the court that they were not far apart from each other as far as the settlement of quantum was concerned. The parties requested the court for the matter to stand down so that they engage each other to settle their differences regarding quantum. The case was then adjourned to the 19th April 2022. Both counsels told the court that they agreed as to the amount to be paid to the plaintiff but differed on the contingencies to be applied for which the matter had to stand down for discussion by both parties.
6. On the 19th April 2022 when the hearing resumed, both counsels informed the court that the matter had been settled and a draft order was prepared and uploaded on caseline. As per counsels' settlement agreement, the amount to be awarded to the plaintiff was R27 399 529.00. It was then brought to the attention of both Counsels by the court that the claimed amount as per summons, was R21 016 000.00 and why it has escalated to R27 399 529.00, for that

matter without making proper amendment to the particulars of claim. As a result of new developments regarding increment of quantum amount the court made an order to the effect that defendant's counsel should obtain and present to court an affidavit confirming the increment of the amount to be awarded and such affidavit should be presented to court on the 20th April 2022. On the 20th April 2022 counsel for the defendant told the court that, as the officer of the court, is entitled to settle the matter on behalf of his client without being mandated to do so as long as he was acting objectively and in the best interest of his client.

7. Both counsels informed the court that new heads of argument and draft court order were uploaded on the caseline and requested the court to make the draft order an order of court. The court informed the counsels that since the matter was settled, it should be referred to the settlement roll.

CONCLUSION

8. Having heard counsels of both parties that they are in ad idem with the amount to be awarded, it is the Court's decision that the matter of quantum has been settled and the provisions of the Judge President's practice manual of 11 June 2021 should be invoked, and the following order is made:

- 8.1. The matter is removed from the trial roll;
- 8.2. The matter is referred to the settlement roll,

8.3. The Registrar should allocate the earliest available date on the settlement roll.

**MAUBANE AJ
JUDGE OF THE HIGH COURT**

Appearances

Counsel for the Plaintiff : Adv. F. Pouer
Attorney for the Plaintiff : O Joubert Attorneys
Counsel for the Defendant : Adv. B. Gedeger
Attorney for the Defendant : Office of the State Attorneys : Pretoria
Date of Hearing : 11th, 19th, 20th, and 21st of April 2022
Date of Judgment : 05 May 2022

Judgment transmitted electronically

