

**IN THE HIGH COURT OF FIJI AT LABASA**  
**CIVIL JURISDICTION**

**Action No. HBC 50 of 2017**

**BETWEEN**

**KAMRUL BI** of Tabia, Labasa, Domestic Duties.

**PLAINTIFF**

**AND**

**THE MEDICAL SUPERINDENT OF THE LABASA HOSPITAL.**

**1<sup>ST</sup> DEFENDANT**

**AND**

**ATTORNEY GENERAL OF FIJI** on behalf of the Government of Fiji.

**2<sup>ND</sup> DEFENDANT**

**Counsel** : Mr. S. Sharma for the Plaintiff  
Mr. J. Pickering for the Defendants

**Date of Hearing** : 12<sup>th</sup> November, 2018

Date of Judgment : 31<sup>st</sup> January, 2019

## JUDGMENT

- [1] The plaintiff instituted these proceedings seeking damages from the defendants for causing pain and suffering due the negligence of the doctor who treated her at Labasa Hospital.
- [2] The particulars of negligence, according to the statement of claim, are as follows:
- I. Failing to carry out through investigation before informing the plaintiff that she requires surgical operation in her kidney and her ureter to extract the stones.
  - II. Failing to inform the plaintiff either in writing or verbally that the procedure involved in the operation.
  - III. Failing to inform the plaintiff that a stent will be inserted inside the ureter to heal the ureter.
  - IV. Failing to advice or inform the plaintiff that the stent will be removed after a short period of time.
  - V. Failing to properly read and analyse the scan and the CT scan report and inform the plaintiff that the pain that the plaintiff was developing was due to the stent that was not removed after the operation.
  - VI. Failing to inform the plaintiff that the stent has been attached to the flesh of the abdomen.
  - VII. Carrying out laser treatment when the 1<sup>st</sup> defendant ought to have known that the stent will not be removed through laser treatment.
  - VIII. Failing to accord the plaintiff proper medical, surgical specialist and other treatment in respect of the plaintiff's condition.

[3] The defendants while denying the allegation of negligence states that proper and adequate care as well as duty of care was accorded to the plaintiff while in hospital. They also state in the statement of defence that the insertion of the stent was recorded in the medical folder.

[4] At the pre-trial conference the parties admitted the following facts:

- 1) That the plaintiff at all material times was a patient of the 1<sup>st</sup> defendant who was diagnosed with stones present in her abdomen.
- 2) That at all material times the 1<sup>st</sup> defendant owned, managed and administered Labasa Hospital (“the Hospital”) and provided medical, specialist and other health services.
- 3) That the 2<sup>nd</sup> defendant is the representative of Government of the Republic of Fiji Islands sued in these proceedings pursuant to the Crown proceedings Act.
- 4) On/about 19<sup>th</sup> day of August 2015, the plaintiff underwent a surgery to her kidney and her ureter where by the 1<sup>st</sup> defendant took out the stones that were present in her kidney and ureter and later discharged on 24<sup>th</sup> august 2015.
- 5) That Dr Isireli and his team from CWM Hospital carried out the surgery on the plaintiff on the advice and directions of the 1<sup>st</sup> defendant.
- 6) That after the surgery Dr isireli inserted a stent inside the plaintiff’s ureter.
- 7) That at the time of her surgery the plaintiff was admitted at Labasa Hospital from 18<sup>th</sup> august 2015 to 24<sup>th</sup> August 2015.
- 8) That after the surgery the 1<sup>st</sup> defendant gave a review date whereby the plaintiff was directed to attend the hospital so that the surgical department could see the surgical site and advice the plaintiff accordingly.
- 9) That after plaintiff was examined at the Nasea Health Centre she attended Urology Department of the Labasa Hospital whereby she was seen by Dr Isireli who initially carried out the surgery.

10) That during 29<sup>th</sup> March 2017 to 31<sup>st</sup> March 2017 the plaintiff was admitted at the CWM Hospital and another surgery was carried out on the plaintiff and the stent together with the stone was taken out from the bladder.

11) That the plaintiff was re-admitted at the Labasa Hospital on the 4<sup>th</sup> day of April 2017 as the surgical site stated discharging puss and on the advice of the 1<sup>st</sup> defendant the plaintiff was admitted for 6 days.

[5] The plaintiff's evidence is that on 19<sup>th</sup> August, 2015 she underwent an operation and before the surgery she was explained how it was to be carried out. The plaintiff was diagnosed with stones in the bladder and it was confirmed after a scanning was done. After the surgery on 24<sup>th</sup> August, 2015 she was discharged from the hospital and she was ask to come to the hospital again after two weeks for further observation which she complied with. Went to the hospital after the surgery she has complained that she passed blood with urine and the doctor has said the bleeding will stop once the wound heals.

[6] After eight months Dr Isireli had told the plaintiff that there was another stone and had prescribed antibiotics. She was diagnosed with another stone after one year and eight months from the first surgery. Dr Isireli then referred the plaintiff to CWM Hospital where she was given laser treatment which was very painful she said.

[8] Dr Rajeev performed the second surgery on 29<sup>th</sup> March, 2017 and before the surgery Dr Rajeev had informed the plaintiff that there were stones between the kidney and the bladder. It was discovered by Dr Rajeev that the stones were attached to the stent and he has removed both the stent and stones. It is the evidence of the plaintiff that she was not informed by the doctors who treated her that the stent had to be removed after three months.

[9] The plaintiff claimed 2300.00 as special damages for transportation and medicine. She said she spent \$1500.00 for transportation. She had to come to the hospital for about 16 times. The amount claimed by the plaintiff as special damages was not challenged by the defendant at the trial and the court see no reason not to award special damages as claimed.

- [10] The defendant called Dr Maloni to testify at the trial. His evidence is based on the medical reports but in cross-examination he expressed his professional opinion about the insertion and removal of the stent. He said that the surgery was necessary because the plaintiff was diagnosed with urine infection. He said surgical wound should heal in three months and the stent is inserted temporarily to prevent the narrowing of the water pipe. It is also his evidence that kidney stent should not be allowed to remain longer than usual because it can cause blockages in the urinary track system and stones can develop around the stent. Dr Maloni also said if the stent was removed in time the second surgery might not have been necessary.
- [11] In cross-examination he also said that it was the duty of the doctor to explain the surgical procedure to the patient and it is possible that the doctor did not advice the patient specifically about the insertion of the stent.
- [12] From the evidence of the plaintiff and Dr Maloni it is clear that the doctor who performed the first surgery did not inform the plaintiff about the insertion of the stent which in my view is negligence on his part. If there is a misdiagnosis that can be categorised as surgical misadventure but leaving the patient for nearly one year and eight months with the stent which should have been removed in three months is clearly negligence on the part of the doctor who performed the surgery.
- [13] The defendants relied on the “Labasa Hospital Surgery Consent Form” signed by the plaintiff where it says:

..... hereby consent for staffs of Labasa Hospital to perform the surgical procedure of .....for .....the risks and possible undesirable consequences associated the procedure have been explained to me including but not limited to including but not limited to blood loss, transfusion reactions, infections, heart complications, blood clots, loss of use of body parts or other neurological injury or death.

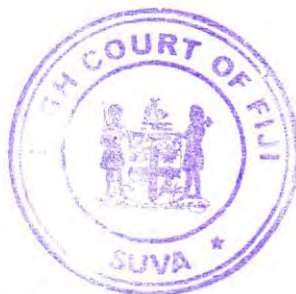
Other risks may include bleeding, infections, trauma.

[14] The issue in this case is not whether the surgery was performed properly or not. The complaint of the plaintiff is that the doctor in charge of the surgery did not follow the post-surgical procedures as required. It is also important to note that the doctors and the hospital staff cannot act negligently seeking cover under Surgical Consent Form and put the lives of the helpless patients in danger. The above clause has the effect of exonerating the doctors and the medical staff from anything happens due to surgical misadventure and not from their gross negligence.

[15] The plaintiff has been in pain for over eighteen months due the negligence of the doctor who performed the surgery. However, there is no evidence that the negligence of the doctor who performed the surgery caused any permanent impairment. Taking these facts into consideration I award \$50,000.00 as damages for pain and suffering.

#### ORDERS

1. The Defendants are ordered to pay the plaintiff \$52,300.00.
2. The defendants are also ordered to pay 3000.00 as costs (summarily assessed) of this action.



  
Lyone Seneviratne

JUDGE

31<sup>st</sup> January, 2019.