



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – BHISHO)**

CASE NO.: 413/2021

Matter heard on: 5 June 2023

Judgment delivered on: 13 June 2023

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED

In the matter between: -

SICELO ISAAC GAZI

Plaintiff

and

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
THE DEPARTMENT OF HEALTH,
EASTERN CAPE PROVINCE**

Defendant

JUDGMENT

SMITH J:

[1] The plaintiff, a 53-year-old adult male, instituted civil action against the Member of the Executive Council for Health, Eastern Cape (the first defendant), and the Superintendent General of the Department of Health, Eastern Cape (the second defendant), for damages arising from the negligence of the defendants' employees.

[2] The plaintiff alleged that during October and November 2019, he was admitted to the Elliot Hospital and treated for a gunshot wound to his right leg. He averred that the medical staff of that hospital, acting in the course and scope of their employment, were negligent in that they, *inter alia*, failed to: examine the plaintiff's wound properly; diagnose the plaintiff's injury as an orthopaedic emergency; refer him to another institution for an angiogram and x-ray examination; and enlist the services of a specialist orthopaedic surgeon who would have been able to interpret the x-ray plates properly and refer him for possible repair of the vascular injury.

[3] The issues of liability and quantum of damages were separated, and the matter proceeded in respect of liability only, with the issue of quantum postponed for later determination.

[4] At the hearing of the matter the parties agreed to admit the written opinions of the following experts: Dr Osman (orthopaedic surgeon); Dr Mazwi (Neurosurgeon); Dr Hardy (Clinical Psychologist); Dr Mzayiya (orthopaedic surgeon); and the joint minute prepared by Drs Osman and Mzayiya.

[5] The defendants did not dispute any of the findings and conclusions of the abovementioned experts. Mr Sambudla, who together with Ms Nqabeni appeared for the plaintiff, therefore only adduced the evidence of the latter.

[6] The plaintiff's undisputed testimony was as follows. On 29 October 2019, after he was shot by an unknown assailant at Ngcobo, he was taken to the Elliot Hospital for treatment. He arrived at the hospital at about 8 am and was immediately taken to the outpatients' department (the OPD) from where he was sent for x-rays. He thereafter again returned to the OPD where he was examined by Dr Nkontobe. The latter cleaned the wound - at some point inserting his finger into the wound - and studied the x-ray plates. He then told the plaintiff that he not could detect any fractures, sutured the wound, put him on a drip and then discharged him. At home he noticed that the wound had become swollen and was still bleeding. He returned to the hospital after a few days and was again referred to the OPD. There he was seen by another doctor, namely Dr Onyiwa, who after studying the x-rays, told him that he detected a fracture of the tibia. Dr Onyiwa then told Dr Nkontobe that he had

missed the fracture. The former then dressed his leg in plaster of Paris and discharged him with the instruction to keep his leg elevated while lying down.

[7] The wound did, however, not improve but continued to swell and bleed. It had also become putrid and discoloured and exuded a foul smell. He thus returned to the Elliot hospital where he was admitted, and the plaster of Paris removed. On 27 November 2023, he was taken to the Frere Hospital, East London, after fainting in the toilet. On 29 November 219, his leg was amputated, initially below the knee and when it was established that the infection had spread further, a second amputation was performed above the knee.

[8] The plaintiff was not cross-examined and Mr Dukada, who appeared for the defendants, confirmed that they did not dispute any aspects of his testimony.

[9] In their joint minute, Drs Osman and Mzayiya, agreed that 'the poor decision taken at the initial presentation, i.e., the site of the injury, fracture of the fibula, active bleeding and there not being any records of the pulses in the foot is the basis for the negligence' and that 'reasonable care' required that the plaintiff should have been referred for an angiogram.

[10] The negligence of the defendants' medical staff in treating the plaintiff at the Elliot Hospital, is thus manifest. Mr Dukada was unable to challenge the ineluctable inferences that: the plaintiff has established on balance of probabilities that the negligent conduct of the defendants' employees was the direct and proximate cause of the amputation of the plaintiff's limb; that they were acting within the course and scope of their employment at all material times; and that the defendants are consequently liable for whatever damages the plaintiff will be able to prove in due course.

[11] In the result the following order issues:

- 11.1. The issue of liability is hereby separated from the issue of quantum; the matter shall proceed on the issue of liability with the issue of quantum postponed sine die for later determination.

11.2. The defendant is held liable for all damages that the plaintiff may prove in respect of the negligent treatment administered during his admission at Elliot Hospital on the 29th October 2019.

11.3. The defendant is liable for the costs of trial on the issue of liability, including all reserved costs, if any, together with interest thereon at the prevailing legal rate from 14 days after date of taxation or agreement to date of final payment thereof, which costs shall include:

11.3.1. the costs of two counsel, where utilized.

11.3.2. the costs of preparing for consultations and trial including the costs of consultations with the various expert witnesses and the plaintiff;

11.3.3. the travelling and accommodation costs of plaintiff's legal representatives attending consultations and court;

11.3.4. the reservation and appearance fees, if any, together with the qualifying fees, if any, of plaintiff's expert witnesses whose reports were filed in terms of Rule 36 (9) (a) and (b); the costs of preparing their reports and supplementary reports, if any; and the costs of preparing their joint minutes, including attending consultations and trial.

JE SMITH
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Plaintiff: Adv. Sambudla
 Adv. Nqabeni
 Mjulelwa Inc Attorneys

No. 1 Alfred Road
Devereux Avenue
Vincent
EAST LONDON
(Ref.: MJULELWA/cm)

Counsel for the Defendant: Adv. Dukada
The State Attorney
c/o Shared Legal Services
32 Alexandra Road
KING WILLIAM'S TOWN
(Ref.: 571/21-P2 (Mr Maqambayi))