

Record damages recorded for blindness

Thomson Snell & Passmore has recovered £2.25 million for a client blinded as a result of retinopathy of prematurity, a disease of the retina which can affect premature babies.

On 22 November 2007, the High Court approved the settlement in the case AB v South East Coast Strategic Health Authority. The award is believed to be the largest ever awarded for the principal injury of blindness.

The claimant was born in 1986 at only 26 weeks gestation. Neonatally, she was given oxygen but the hospital negligently failed to adequately monitor arterial oxygen levels. The claimant received too much oxygen and sadly suffered retinopathy of prematurity which rendered her blind.

Thomson Snell & Passmore was instructed many years later. A report was obtained from a paediatrician who found that neonatal oxygen management had fallen below an acceptable standard. A report was then obtained from a specialist in childhood blindness who confirmed that the claimant's blindness was caused by the defendant's negligence.

The defendant admitted breach of duty less than three months after receiving the letter of claim made an offer of £400,000 which was rejected.

The claimant also suffered a variety of endocrine problems, polycystic ovarian syndrome and obesity. Her medical history revealed serious mental health problems including depression and self harm.

It was apparent that the claimant's mental health problems were very serious, but unclear as to what extent these had been caused by her obesity (as she claimed herself) or caused, or aggravated, by matters connected to her blindness. An expert was instructed who reported that her endocrine problems were unconnected to her blindness (contrary to the opinion of a treating paediatrician), but her obesity had been aggravated by her inactive lifestyle which was related to the blindness.

We then obtained a report from a psychiatrist who concluded that whilst the claimant's obesity was a major factor in her depressive

If I had run the case at the timeframe demanded by the defendant the claimant could certainly have received far less and would have been badly under compensated.

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The team dealing with this case was led by Graham Bell, Partner Clinical Negligence.

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Record damages recorded for blindness Continued...

illness, this was also aggravated by her social isolation which was largely caused by the blindness.

Proceedings were issued and the defendant made a further offer of £600,000. By this time, the claimant had become an adult but then refused to co-operate with the preparation of her case, even though compensation was the only realistic chance she had of improving her quality of life. As a result of the claimant's non-co-operation, we made an application to the court for a stay in order that further expert evidence could be requested addressing the issue of whether the claimant had mental capacity to provide instructions.

Our psychiatrist concluded that the claimant did lack capacity and the official solicitor agreed to act as litigation friend.

The court case then resumed and the parties exchanged reports from experts to report on care and employment prospects. In broad terms, the defendant's experts agreed with the evidence of our experts, save for the psychiatric evidence. The defendant's psychiatrist agreed that the claimant lacked capacity but did not attribute her psychiatric illness to her blindness and thought that the overwhelming majority of her symptoms would have occurred in any event. It was alleged that the claimant's employment prospects would have been blighted by obesity and depression in any event. This argument stood little chance of success at trial as the defendant's own endocrinologist agreed that obesity would not have prejudiced employment prospects.

A settlement meeting was arranged, at which a sum of £2.25 million was agreed. The agreement was subsequently approved by the High Court and the money passed to the Court of Protection in view of the claimant's lack of capacity. At our request, the court imposed a confidentiality clause in the final order. The case is reported in Lawtel.

The size of the settlement reflected a number of factors that are unusual for blindness cases. We were able to recover a loss of earnings for life. Although a large majority of blind people do not work, most have the capacity to work. Most blind people can live at least semi-independently, whereas the claimant was likely to require a substantial degree of care for life.

The case also highlights the devastating impact of a superimposed psychiatric injury which is something that we frequently encounter. It also warns of the dangers of settling the case of any claimant below the age of 21 when it is still not certain what the impact of their injury will be on their employment and life prospects.

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