

Record award for Tasmania

Grimsey v The Southern Regional Health Board

Southern Regional Health Board v Grimsey

Roger Baker, Hobart

The plaintiff

Megan was born on the 27th February, 1990 at the Queen Alexandra Hospital at Hobart. Her mother Heather, had previously enjoyed robust good health and the pregnancy was uneventful.

Heather wanted to have a natural childbirth but during the course of labour reconsidered and asked that she be given an injection of pethidine. The injection was prepared but Heather then said she could get through without it. Further down the track Heather asked that she be given the pain killing drug. Tragically, the labour ward sister gave her Syntometrine, a drug routinely administered after childbirth to assist in the expulsion of the placenta from the mother's body and to reduce post-partum bleeding.

Upon the Syntometrine being administered, Heather underwent a single massive contraction. Megan of course was trapped inside, deprived of the normal flow of maternal oxygen. It wasn't until twenty two minutes after the Syntometrine was administered that Megan was born. She was cyanosed, there was only the barest trace of a heart beat and large amounts of clear liquid were aspirated from her throat. It took eighteen minutes for regular aspiration to be established.

The almost inevitable consequence of the asphyxiation was that Megan now suffers from athetoid cerebral palsy. Her body writhes in constant spasticity. Because of the tonicity of her muscles she is strong for her age and size and difficult to handle and manage. Her intellect has probably been left relatively unimpaired but is still difficult to assess because of her almost total loss of physical function.

The best that can be hoped for is that she will be able to communicate with a computer and perhaps operate an electric wheelchair. She will never be able to talk, feed herself, and attend to her own toilet or

cope without twenty-four hour one-on-one care. She suffered a loss of life expectancy.

The Trial at first instance

Interlocutory judgment for the Plaintiff had been entered early in the proceedings and the Plaintiff's lawyers proceeded into the trial as an assessment of damages *simpliciter*. Some days into the trial they were surprised when the defence raised the argument that in consenting to judgment the Defendant had not conceded that the Plaintiff had suffered damage beyond *de minimis* as a result of the Defendant's admitted negligence. In particular, they argued, the judgment was not to be taken as a finding that there was any nexus at all between that negligence and Megan's disabling cerebral palsy. There is little doubt that argument had been run to persuade the Plaintiff to accept an offer of in excess of \$3 million. The Plaintiff pressed ahead and the Defendant's argument succeeded. Liability for the cerebral palsy was put in issue and the Plaintiff proceeded to recall some of its witnesses on that issue, rather than adjourning to give the Defence the opportunity to muster its own experts.

Judgment at first instance

The trial judge Mr Justice Wright rejected the defence that Megan's catastrophic condition was caused by a pre-existing cerebral defect. He awarded judgment in her favour for \$4,109,460.

This was by far the largest award of any kind in the Tasmanian Courts and about three times the size of its runner up. The cost of future care accounted for most of this (\$2,145,060) followed by housing with pool and special equipment (\$500,000 plus) with \$300,000 being awarded for pain, suffering and loss of amenities.

The balance was for special equip-

ment including computer and wheelchair, motor vehicle expenses and various forms of therapy.

His Honour said of Megan "Never have I known a more gravely disabled Plaintiff".

General Damages Award

Whilst the size of the award aroused general interest among the local profession the issue creating the greatest interest was the size of the award for general damages. For once a Tasmanian Court appeared to have adopted a mainland tariff for the assessment of general damages.



Roger Baker

Court victory for smoker

A smoker who sued Philip Morris after being diagnosed with inoperable cancer won \$US1.5 million (\$2.33 million) in the first case to reach trial since California lifted a ban on lawsuits by individuals against tobacco companies.

The compensatory damages awarded yesterday cover medical costs, pain and suffering. The Superior Court jury was expected to return on Wednesday to consider punitive damages, lawyers for the plaintiff said.

In a statement yesterday, Philip Morris said: "Until [the punitive] phase of the case has been completed, Philip Morris will have no further comment on the case or the verdict."

Ms Patricia Henley's case was the first since the repeal of a 1987 tort reform law that banned lawsuits by smokers on the basis that the risks of smoking were well known.

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