The facts

Paraskevas Naxakis, the appellant, was admitted to the Western Hospital (the hospital) on 14 July 1980. He was then 12 years old. He had been struck on the head by another schoolboy's bag, possibly twice, and had collapsed. He was taken to the hospital and admitted under the care of a senior neurosurgeon, Mr Jensen, who treated him for a subarachnoid haemorrhage. During the ensuing days there were unusual features of Paraskevas's condition but he gradually improved and was discharged on the 23 July 1980.

He collapsed at home on the 25 July and was then taken to the Royal Children's Hospital where it was found he had a major intracranial bleed from a burst aneurysm. He underwent surgery to clip the bleed but nonetheless suffered permanent physical and intellectual impairment.

The matter came on for hearing before Harper J and a civil jury. At the close of the evidence, the trial judge ruled that there was no case to go before the jury and judgment was entered in favour of the defendants. An appeal to the Victorian Court of Appeal was dismissed and the plaintiff then successfully appealed to the High Court.

The case against the hospital and the neurosurgeon was that the neurosurgeon had failed to consider an alternative diagnosis of aneurysm and that the neurosurgeon ought to have performed an angiogram to establish the cause of Paraskevas's condition.

The trial went for 14 days and evidence relating to the management was given by a number neurosurgeons including Mr Klug who undertook the surgery at the Royal Childrens Hospital.

Having regard to the evidence given by Mr Klug the Court held that there was sufficient evidence to go before the jury to allow it to decide whether the hospital and/or the neurosurgeon had been negligent. The suggestion by the expert medical witnesses that the neurosurgeon had not been negligent was not regarded as determinative.

Gaudron J set out the relevant test to be applied in a "no case" submission. Where there is a jury, the case must be left to them "[if] there is evidence upon which [they] could reasonably find for the plaintiff", or, as was said by Hayne JA in the Court of Appeal, the case can be taken away only if "there was *no* evidence on which the jury could properly conclude that the plaintiff had made out his case." That does not mean that the case must be left to the jury if the evidence is "so negligible in character as to amount only to a scintilla". However, if there is evidence on which a jury could find for the plaintiff, it does not matter that there is contradictory evidence or, even, as was said by Harper J at first instance, "that the overwhelming body of evidence points to the [contrary]"

Moreover, when considering whether there is some evidence upon which a jury could find for a plaintiff, it is important to bear in mind that the jury may properly accept parts of a witness's evidence and reject others. Thus, for example, a jury may believe what is said by a witness in examination-in-chief and reject apparent modifications or qualifications elicited in cross-examination.

Mc Hugh J considered on the evidence in this case, it was reasonably open to the jury to accept the evidence of Mr Klug that the plaintiff's subarachnoid haemorrhage, which was diagnosed on

The victim culture

HARDLY A DAY passes without further evidence that Britain is succumbing to the so-called "compensation culture" and its near relation, the "victim culture". Lawyers, doctors, travel agents, consumer groups and others are all sounding the alarm, warning that the British are learning from their American cousins to see every misfortune or wrong as a chance to make a fortune by going to law. This has implications far wider than its effect on insurance premiums.

Individuals may benefit, but the common good usually does not. It is reported that one hospital had to close down its mother-and-baby clinic because of the enormous damages it had to pay to the parents of a baby injured at birth. Employment tribunals have become a boom industry. Claims for medical negligence are causing doctors to avoid all treatment with an element of risk. When travelling by air they are said to be increasingly reluctant to respond to the plea "Is there a doctor on board?" in case things go wrong and they are sued. So much for the Good Samaritan – or perhaps he was insured.

Every day the courts hand down new judgements stretching the limits of damages to new heights or the grounds for action into new areas. One of the factors which triggered this tide of litigiousness was undoubtedly the decision of the last Government, in an effort to liberalise the legal profession, to allow solicitors to advertise for clients. Now they tout for business ruthlessly, aided by the new no-win, no-fee system for paying legal costs. In so far as there in no element of personal merit in winning a large claim for damages, the legal system has come to resemble the national lottery.

There is a deeper spiritual malaise behind this desperate need to sue someone for every respect in which life falls short of the ideal. As Bishop Vincent Nichols said in a recent lecture at Salford University, the desire for compensation has taken over from the desire for a deeper understanding of life's ups and downs, an understanding which was once part of a person's spiritual quest. Life is increasingly regarded as meaningless and the eternal big questions as not worth asking. A fat cheque has been substituted for peace of mind or the wisdom of experience.

If somebody does somebody else harm, deliberately or negligently, they must do something to repair the harm. But this principle has been expanded too far. Recently a woman sued her doctor for failing to recommend an abortion when her unborn child was likely to be handicapped. Her action was indicative of the thought process which is becoming widespread.

The victim culture spreads the message that it is always someone else's fault when things go wrong. Victimhood leads to resentment, fatalism and passivity. It shouts about its rights and wallows in its grievances. These spiritual diseases are not yet so far gone as to be untreatable. But they can only become worse if public authorities – including legislators, judges and the legal profession – do not think through the consequences of all their actions.

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