MD v BETSI CADWALADR UNIVERSITY HEALTH BOARD (2021)

Lawtel: This Quantum Report was provided courtesy of Leslie Keegan of 7 Bedford Row, counsel for the claimant.

Date of Award/Settlement
9 December 2021

PSLA Damages
£65,000 (£65,000.00 RPI)

Total Damages
£775,000 (£775,000.00 RPI)

Kemp Classification
L Other conditions and diseases
N Injuries resulting from clinical negligence

Kemp Sub-classification
L20 Miscellaneous conditions and diseases
N2 Surgical negligence

Award Type
Out of Court Settlement

Court
Court not applicable

Age at Injury
41

Age at Award/Settlement
47

Gender
Female

Legal Representative
For the claimant: Leslie instructed by Thompsons Solicitors (Cardiff).For the defendant: Simon instructed by NWSSP Legal & Risk Services.
The claimant, a 47-year-old woman, received £775,000 total damages after she developed a **Functional Neurological Disorder** following a psychological reaction to negligent surgical treatment (a failure to identify and treat a biliary leak that resulted in some physical problems in the form of mild pancreatitis) in November 2015. The **disorder** had a significant effect on the ability of the claimant to function and led to cognitive, gait and limb weakness issues.

Most significant injury: **Functional Neurological Disorder** as a result of psychological reaction to negligent surgical treatment. The claimant suffers with change of bowel habits, fatigue and long-term impairment of her **neurological** functioning including cognitive, gait and limb weakness issues.

Extent of injury: Long-term impairment of neuropsychological functioning; not able to work; care and assistance required with personal and domestic tasks.

Total injury duration: permanent

Clinical negligence: C, female, aged 41 at the date of incident and 47 at the date of settlement, suffered injury when she developed a **functional neurological disorder** following negligent surgical treatment in November 2015.

On 17 November 2015, C began to experience abdominal discomfort and following clinical examination and investigation at a hospital of the defendant Health Board (D), it was concluded that she had acute cholecystitis secondary to gall stones. On the 19 November 2015, she underwent an emergency laparoscopic cholecystectomy. In the days following the procedure, her condition deteriorated with episodes of vomiting, reports of pain in the ribs and back, reduced oxygen saturations and pain in the upper right quadrant. By 23 November plans were made for an ERCP and ultrasound scan. Thereafter, C's condition deteriorated further, and a pulmonary angiogram was carried out revealing fluid around the lungs.

An ultrasound scan performed on 25 November demonstrated a massive build-up of fluid around the operation area. The sub-hepatic collection of fluid was not drained until 27 November. At that point bile coloured fluid was drained and a pigtail drain was inserted. On 1st December 2015 in view of the continuing bile leak, an ERCP was performed, and a stent was inserted. By 2 December, it was considered that C might have post-ERCP acute pancreatitis; her inflammatory markers (CRP and White cell count) were raised and remained raised on 5 December.

By 10 December C had shortness of breath and an X-ray revealed fluid on the lungs. Antibiotics were commenced. Between 12-24 December, C had a swinging pyrexia. A repeat ERCP was performed which showed some leakage of bile into the gall bladder area from the cystic duct or gall bladder bed and the stent was removed and replaced with a further stent.

C's condition improved and by 30 December her white cell count was normal, and her CRP was reduced. C's right upper quadrant drain was removed on 7 January 2016 and she was discharged on 11 January. She returned to have the stent removed on 8 March 2016.

C made a slow recovery and suffered with change of bowel habit, fatigue and long-term impairment of her neuropsychological functioning which resulted in her having to give up her job and requiring some care and assistance with personal and domestic tasks.

D admitted that there was (i) a delay in diagnosing the bile leak following the initial operation on 19 November; (ii) a failure to give C NSAIDs on the occasion of the first ERCP. The general surgical experts agreed the negligence led to a slightly longer stay in hospital (two to three days), and a discrete period of pain and suffering due to mild pancreatitis following the initial operation when C had an undiagnosed bile leak.

The gastroenterologists agreed that the ongoing bowel symptoms involving change of bowel habit and ulcerative colitis were not caused by the negligence and the microbiologists agreed that the sepsis was not severe enough to lead to any brain damage. The Neurologists agreed that there was no organic cause for her cognitive, gait and limb weakness issues and that these were likely to be **functional** **neurological** symptoms. The neuropsychologists agreed that C had a vulnerability prior to the index event which made her more likely to experience anxiety in response to stressful life events. They agreed that C had mild PTSD caused by the index events but that she had also developed **functional** **neurological** symptoms including slurred speech, confusion, word-finding difficulties and short-term memory difficulties in addition to symptoms of PTSD (including increased anxiety, sleep disturbance, flashbacks and nightmares). They also agreed that C presented with chronic fatigue with intense physical and mental fatigue on small physical or mental exertion.

There was a large measure of agreement as between the experts in their respective disciplines that the failure to identify and treat the biliary leak that occurred caused some physical problems in the form of mild pancreatitis; that it did not cause brain damage but that it caused a **Functional** **Neurological** **Disorder** which had significant effects on the ability of C to function. FND is more of a descriptive rather than an explanatory diagnosis; it reflects the fact that there are **neurological** like symptoms for which there is an absence of evidence of a basis in organic pathology and/or the fact that the extent of the evident impairment or disability is greater than could reasonably be explained by the known organic pathology.

It was also agreed that even with appropriate neuropsychological therapy there was potentially a wide range of possible outcomes from a neuropsychological or neuropsychiatric perspective, ranging from no meaningful change through to some modest improvements.

Out of Court Settlement: £775,000 total damages

General Damages: pain, suffering and loss of amenity: agreed at £65,000.

Past losses: care: £112,500; loss of earnings: £100,000; transport: £1,600; medical: £3,560; Miscellaneous: £200.

Future losses: care: £250,000; loss of earnings: £175,000; Equipment: £60,000; Future medication: £3,000.

Total: £771,000, plus interest. Net amount after CRU: £756,935.

