



Neutral Citation Number: [2022] EWHC 133 (QB)

CLINICAL NEGLIGENCE

Case No: QB-2016-001621

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 January 2022

Before :

RICHARD SPEARMAN O.C.
(Sitting as a Judge of the Queens Bench Division)

Between :

RXP
(a child by his father and Litigation Friend, SYP)
- and -
EAST LANCASHIRE HOSPITALS NHS TRUST

Claimant

Defendant

Andrew Post QC (instructed by **Fieldfisher**) for the **Claimant**
John Whitting QC (instructed by **Hempsons**) for the **Defendant**

Hearing dates: 24 January 2022

Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to Bailii and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 11:30am on 27 January 2022.

Richard Spearman Q.C.:

1. This was to have been the first day of the trial of the issue of quantum in this claim, in which an anonymity order has been made in favour of the Claimant, who brings these proceedings for clinical negligence acting by his father and litigation friend. However, settlement of that issue has been achieved, subject to the approval of the Court, and accordingly the purpose of today's hearing is for me to consider whether the proposed settlement of the damages claim in this case is in the best interests of the Claimant.
2. The claim arises out of the neurological injuries suffered by the Claimant at the time of his birth, at the Royal Blackburn Hospital, on 3 November 2008. In brief outline, the central elements of the claim are as follows. The Claimant suffered a hypoxic ischaemic injury at birth which has caused him both physical and cognitive disability. He is independently mobile, but he has an abnormal gait and balance difficulties. He is clumsy and uncoordinated, and he tires easily. He has significant neurocognitive impairments, including learning and behavioural difficulties. The Claimant is, and will always be, reliant on others for almost all the activities of daily living.
3. The issues of breach of duty and causation were compromised on terms, approved by Lambert J on 31 July 2019, that the Defendant pay 95% of damages to be assessed.
4. The matter then progressed towards an assessment of damages hearing, but last month, in December 2021, the parties were able to reach agreement on a proposed settlement, the key terms of which are that the Defendant will pay a retained sum of £7,125,000, and will also pay periodical payments in respect of care and case management of £110,000 per annum in each year from 15 December 2022 to 15 December 2026 inclusive, and of £157,500 per annum from 15 December 2027 onwards for the rest of the Claimant's life. A Deputy has been appointed in this case, and in accordance with the form of Order that the Court is asked to approve, those sums (less various deductions, among other things to take account of interim payments which have already been made) will be paid into a bank account of the Deputy, who will manage those sums in conjunction with the Claimant's parents so as to best meet the Claimant's needs. It is further proposed that part of the damages, in the sum of £223,274, should be paid out to the Claimant's parents in repayment of expenses incurred by them on his behalf and gratuitous care provided by them to him.
5. It is clear that the Claimant has complex needs, which are reflected in the elements which make up the proposed award. I have had the benefit of reading a very detailed and thorough advice of Mr Post QC which sets out the reasons why a settlement in this form and in these figures is in the Claimant's best interests. That advice considers not only the topics of (i) general damages and (ii) past loss but also (iii) future care and case management both up to the age of adulthood and thereafter and (iv) education, (v) future loss of earnings, (vi) therapies, (vii) aids and equipment, (viii) assistive technology, (viii) accommodation, (ix) vehicle expenses, (x) annual recurring costs including

holidays, and (xi) Court of Protection costs. The advice also explains why the structure of the proposed award is considered appropriate and one which best meets the needs of the Claimant, specifically by striking a suitable balance between index linked, tax-free annual payments for life and a large lump sum being available to meet contingencies as and when they may occur; and, further, why it has not been considered necessary to obtain advice from an IFA in this particular case.

6. I have given careful consideration to that advice, together with the other papers in the case to which I have been referred and the assistance with which I have been provided by Counsel this morning. Having considered all of those materials, I accept that this is a commendable settlement from the perspective of the Claimant. I am satisfied that the figures and the way in which they are structured and the balance between lump-sum and periodical payments is suitable, fair and appropriate. I am also satisfied that the proposed payment out of part of the damages to the Claimant's parents is appropriate.
7. I am therefore happy to give my approval to the settlement and an Order in the form proposed can be made, incorporating the minor amendments explained by Mr Post QC.
8. The Claimant's injuries have given rise and will continue to give rise to extensive challenges not only for himself but also for his entire family. He is fortunate to have been cared for to date by his loving and devoted parents, who have tended to his needs with limited external support. The extent to which the family has kept the Claimant so well and looked after him with such care and devotion is apparent not only from their witness statements, which I have read, but also from what Mr Post QC has said on behalf of the Claimant in open court today. As he explained, they have brought him up in such a way that he is able to have a life which is as near as possible to that of a boy of his age having regard to the nature of his disadvantages. Mr Whitting QC on behalf of the Defendant has also recognised today the extent of these challenges, and has paid tribute to the Claimant's parents, and their devotion to him in providing him with the best quality of life and remarkable care. While no amount of financial compensation could possibly make up for the tragedy and severity of the Claimant's injuries, Mr Whitting QC expressed the hope that this award will at least enable that remarkable level of care to continue to be provided. I would like to associate myself with those tributes, to express my own admiration for what the Claimant's parents have done and continue to do, in these sad and difficult circumstances, and to wish them all well now that this litigation has come to an end through the Court's approval of this settlement.