

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 3117/2005

LOMLANDVO SIFUNDZA

Plaintiff

And

RALEIGH FITKIN MEMORIAL HOSPITAL

Defendant

Coram

S. B. MAPHALALA - J

For the Plaintiff

MR. M. SIMELANE

For the Defendant

IN ABSENTIA

JUDGMENT

7th March 2008

[1] The Plaintiff being Lomlandvo Sifundza an adult Swazi female born on the 15th August, 1981 has filed this action for damages against the Defendant who is Raleigh Fitkin Memorial Hospital, a medical institution situated in the Manzini area, district of Manzini Kingdom of Swaziland. Plaintiff seeks an amount of E283, 800-00 as damages and costs of suit.

[2] The Plaintiff contends in her Particulars of Claim that on the 28th February 2004, she attended at the Defendant's maternity ward and paid the prescribed fee upon discharge on the 29th February 2004. On the said day being 28th February 2004, the parties entered into an oral agreement at Manzini and the Defendant was represented by its employee P.F. Dlamini in terms of which the Defendant undertook to deliver the Plaintiff's baby with such professional skill as is reasonable for the delivery processes.

[3] The Defendant's employee was at all times relevant to these proceedings acting in

the course and within the scope of their employment with Raleigh Fitkin Memorial Hospital. In breach of the said term of the parties agreement, the Defendant's employee failed to apply due care and skill, in carrying out all the delivery processes in one or more of the following respects:

- 6.1 They failed to remove placenta after the Plaintiff's baby was delivered.
- 6.2 Despite having observed the Plaintiff after the delivery of the baby, breach their duty of care and skill in ensuring that the placenta is removed.

[4] Plaintiff contends that as a result of Defendant's negligence, she experienced pain and suffering and had to undergo further medical treatment at Salvation Army Clinic.

[5] Plaintiff further contends that in consequence of the Defendant's aforesaid breaches of the parties contract or alternatively of his duty of care and skill towards her, the Plaintiff suffered damages in the sum of E283, 8000-00 made up and calculated as follows:

- | | | |
|----|--------------------------------|--------------|
| a) | Pain, suffering and discomfort | E230, 000-00 |
| b) | Medical expenses | E 800-00 |
| c) | Future medical expenses | E 53, 000-00 |

[6] On 3 February 2006, Plaintiff was granted default judgment by this court on the liability of the Defendant and the question of the *quantum* of damages was postponed to a future date. Indeed on 10th August 2007, the court heard submissions on this aspect of the matter and also the court was referred to the affidavit in proof of damages by a medical doctor one Thembi Tshabalala who testified therein that in her opinion the damages claimed by the Plaintiff are fair and reasonable.

[7] In arguments before me Counsel for the Plaintiff contended that the amount sought by the Plaintiff is fair and reasonable on the facts of the present case. I later sought further Heads of Argument from Counsel regarding other similar cases for purposes of making comparisons. Indeed, Counsel for Plaintiff did file Heads of Arguments where he provided South African decided cases including the cases of *Burger vs Union National South British Insurance Co. 1975 94) S.A. at 75 D – G*, *Muller vs Mutual and Federal Insurance Co. Ltd and another 1994 (2) S.A. 425 at 456* and that of *Sandler vs Wholesaler Coal Suppliers Ltd 1941 AD 194 at 199*. In the latter judgment Watermeyer JA stated the following:

“In considering that question it must be recognized that though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there is no scales by which pain and

suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty. The amount to be awarded as compensation can only be determined by the broadest general consideration and the figure arrived at, must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case".

[8] Having considered the above legal principles and the facts of the matter I have come to the considered view on the first head that of pain, suffering and discomfort that the Applicant would be entitled to damages of E80, 000-00. On the second head that of medical expenses Plaintiff would be entitled to the sum of E800-00. On the last head that of future expenses the Plaintiff would be entitled to the sum of E53, 000-00 as claimed.

[9] In the result, for the afore-going reasons the Plaintiff is entitled to damages from the Defendant in the sum of E133, 800-00 made up as follows:

a)	Pain, suffering and discomfort	E80, 000-00
b)	Medical expenses	E 800-00
c)	Future medical expenses	<u>E53, 000-00</u>
	TOTAL	E133, 000-00

[10] Further, I rule that costs to follow the event.

S. B. MAPHALALA

JUDGE