



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Life Healthcare Group (PTY) LTD v DR Abdool Samad Suliman (529/17) [2018] ZASCA 118 (20 September 2018)

From: The Registrar, Supreme Court of Appeal

Date: 20 September 2018

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Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today, the Supreme Court of Appeal (SCA) unanimously upheld an appeal against a judgment of the KwaZulu-Natal Local Division of the High Court, Durban (the high court), in the matter of Life Healthcare Group (PTY) LTD (the hospital) v Dr Abdool Samad Suliman (Dr Suliman).

The issue at the centre of this appeal concerned the question as to whether Dr Suliman had a legal duty to Mrs Sibaya, a pregnant patient, and if so whether his failure to discharge such legal duty was the reason for Mrs Sibaya's new born baby developing cerebral palsy.

Mrs Sibaya initially had another doctor overseeing her pregnancy and scheduled to attend to the delivery of her baby. Mrs Sibaya's contracted doctor was not available on the day in which she was in labour and as such, the contracted doctor requested that Dr Suliman 'cover' for him by attending to Mrs Sibaya. Dr Suliman agreed to this and subsequently responded to a call from one of the nurses at the hospital informing him that Mrs Sibaya was in labour and had been admitted to the hospital.

Dr Suliman proceeded to give instructions telephonically to the nurse to allow the labour to proceed and for the patient to be sedated in addition to prescribing certain medication. Dr Suliman also gave telephonic instructions related to the care of Mrs Sibaya once more in a subsequent telephone call by the hospital nurses. At no time did Dr Suliman visit the hospital to assess the situation in person. The nurses while speaking to Dr Suliman failed to read to him the CTG results and because Dr Suliman had not attended to the hospital in person, he was unaware that all this time the foetus had been in distress. When Dr Suliman finally attended to the hospital, several hours later, a series of logistical glitches led to Dr Suliman having to perform a episiotomy and Mrs Sibaya's baby ended up

developing cerebral palsy - an outcome that on the evidence led could have been prevented had the distress of the foetus been detected by both the hospital nurses and by Dr Suliman at an earlier stage.

The high court found that the hospital and Dr Suliman had a legal duty to care for Mrs Sibaya. The high court also found that both the hospital and Dr Suliman breached such legal duty and were therefore both negligent. However, the high court was unable to find a factual causal link between the negligence of Dr Suliman and the resultant injuries to Mrs Sibaya and her baby – hence the appeal to this court by the hospital.

On an analysis of the facts and the law, the SCA found that Dr Suliman owed a legal duty to Mrs Sibaya and that such duty arose immediately when Dr Suliman acceded to the request to 'cover' for Mrs Sibaya's contracted doctor. In coming to this conclusion, the SCA rejected Dr Suliman's contention that Mrs Sibaya was not his patient and that he was merely 'covering' for Mrs Sibaya's contracted Doctor.

The SCA further concluded that Dr Suliman had breached his legal duty to care by failing to act as the reasonable obstetrician would have acted. The SCA held that if Dr Suliman had attended to Mrs Sibaya, he would have detected the distress and would have taken measures that may reasonably have prevented Mrs Sibaya's baby developing cerebral palsy.

In deciding the matter of damages suffered by Mrs Sibaya, the SCA apportioned the damages between the hospital and Dr Suliman on a 60:40 basis in favour of the hospital and in so doing upheld the hospital's argument that Dr Suliman was in contributory negligence with them and as such damages should be apportioned accordingly.

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