

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. C.V. 2008-03462**

**Between**

**ROY LAWRENCE CAESAR**

**(Legal Personal Representative and Administrator of the Estate  
Of ESLA ELSA CAESAR)**

**Claimant**

**And**

**SOUTH WEST REGIONAL HEALTH AUTHORITY**

**Defendant**

**Before the Honourable Mr. Justice Frank Seepersad**

**Appearances:**

1. Mr. Kwalsingh instructed by Ms. Francis for the Claimant
2. Mr. Rajkumar instructed by Mr. Sinanan for the Defendant

**Date of Delivery: 19<sup>th</sup> March, 2014**

## Decision

1. By Amended Claim Form and Statement of Case the Claimants who are the father and Legal Personal Representative of Elsa Caesar (deceased) and the sister of the deceased and next friend of the deceased's minor child, claimed:
  - a. Damages for consequential loss suffered as a result of the pain, loss and resultant death of Elsa Esla Caesar as a result of the negligence of the Defendant its servants and or agents and or breach of its duty of care in failing to provide a safe system of Health care at the San Fernando General Hospital.
  - b. Damages under the Supreme Court of Judicature Act Chapter 4:01 of the Laws of Trinidad and Tobago on behalf of the Estate of the deceased for the loss of expectation of life and consequential loss caused to the deceased.
  - c. Damages under the Compensation for Injuries Act Chapter 8:05 of the Laws of Trinidad and Tobago for the benefit of the deceased dependant for damages for the death of the deceased.
  - d. Interest at such rate as the Court may deem fit.
  - e. Costs.
  - f. Such further and or other reliefs as the Court may deem fit.
  
2. In support of the case both Claimants filed Witness Statements. The Defendant filed a Defence but filed no Witness Statements. At the trial Attorney for the Claimants directed the Court to the decision of Jones J in **Andre Marchong v. Trinidad and Tobago Electricity Commission and Galt and Little page Limited CV 2008-04045** and submitted that the Defence filed amounted to a bare denial and that that fact coupled with its failure to file any Witness Statements should result in the Defendant being denied any right to cross examine the Claimants' witnesses. The Court accepted this submission and found that the facts of the instant case were almost identical to the facts that engaged Madam Justice Jones in **Marchong** and the Court ruled that the Defendant was debarred from participating in the trial and could not cross-examine the Claimants' witnesses.

## The Evidence

3. Roy Caesar stated in his witness statement at paragraphs 7 to 12 as follows:

- a. She was thereafter transferred to the San Fernando General Hospital for surgery remove the tumor which was performed about three days after she was warded at the San Fernando General Hospital. My ex wife Beulah Caesar was with her when she was transferred to San Fernando and stayed with her until she died.
- b. The operation for the brain surgery was a success and the tumor removed but my daughter died four days after the operation from Broncho-pneumonia on the 13<sup>th</sup> September, 2004 at the said hospital. She was only twenty five years old.
- c. Prior to my daughter's death about two days after the surgery I returned to Trinidad and I noticed gangrene on the toes of both of my daughter's feet. My daughter had no gangrene on any part of her body when she fell ill nor did she suffer with broncho-pneumonia at any point in her life or when she fell ill.
- d. My daughter contracted broncho-pneumonia and developed gangrene while in the care of the Defendant who I verily believe were negligent in the post operative care of my daughter in allowing her to contract and develop these diseases. Further after my daughter developed these conditions in particular the pneumonia she was not effectively treated and this caused her death. My daughter did not die as a result of the brain tumor or from the surgery performed at the San Fernando General Hospital. When Esla first fell ill she was not suffering from any respiratory illness or pneumonia.
- e. The sudden and unexpected death of my young daughter caused severe grief and trauma to me and the whole family. My daughter was the mother of one child namely Mickel Luke Tyrick Caesar born on the 18<sup>th</sup> March, 2001. He was only three years old at the time of his mother's death. The death of his mother was very grievous and traumatic for this young child who grieved for several months and cried endlessly for his dead mother and he would often

ask for her. It caused me and my family even more grief to see this young child in that heartbroken state.

- f. After a few months had passed and when I had regained some of my physical and emotional strength I started to look for answer from the Health Authority into the death of my daughter. I made several personal request for a report into her death and medical reports or records concerning her condition, treatment and why she died.
- g. Despite my great efforts to date six years after the death of Elsa I have no receive a single medical report from the Defendant on anything concerning Esla. The only documents I even received was an In-patient Bill for Esla from the North West Regional Health Authority dated 11<sup>th</sup> October, 2004.

4. Lisa Ceasar at paragraphs 7 – 9 of her witness statement said as follows:

- a. I traveled to Trinidad to look after Esla when she was transferred to Mt. Hope Hospital. I stayed for one week in Trinidad with Esla while several tests were being conducted on her to determine what was wrong with her. White at Mr. Hope the tests revealed that there was a tumor in Esla's brain and she was then transferred to the San Fernando General Hospital for surgery to remove the brain tumor.
- b. When she was transferred to San Fernando General Hospital I returned to Tobago and my mother came to Trinidad to be with Esla while she was at the San Fernando General Hospital. I returned to Trinidad a couple days later and before the surgery was scheduled. Esla was in good spirits and has no sign of a cold pneumonia or any respiratory or breathing problems. Esla this time alert and in good spirits.
- c. Esla had the surgery done to remove the tumor. I recall that it was a Dr. Singh who performed the operation. The said surgery was a success and the tumor was removed. However Esla died a few days later from broncho-pneumonia. Elsa's body was returned to Tobago for burial.

5. The Court noted that several portions of the said witness statements contained opinion evidence that these witnesses were not unqualified to give.
6. The statement at paragraph 7 of Roy Caesar's witness statement as it relates to the success of the tumor operation is a statement that the witness was unqualified to make and it was not premised on any information that he received and pursuant to which any hearsay notice was filed.
7. At paragraph 8 Caesar's observation of "gangrene" dealt with observations of a medical condition that the witness was not qualified to comment on. In addition the witness was not qualified to say whether his deceased daughter suffered with broncho-pneumonia prior to her surgery.
8. The evidence of Roy Caesar was silent as to any observations made by him of the nature of the deceased's condition or appearance. At paragraph 9 of his statement he said "my daughter contracted broncho-pneumonia and developed gangrene while in the care of the Defendant who I verily believe were negligent in the post operative care of my daughter in allowing her to contract and develop these diseases. Further after my daughter developed these conditions in particular the pneumonia she was not effectively treated and this caused her death". This is a statement that the witness was unqualified to make and the said statement has no probative value, what the witness believed was and is irrelevant to the determination of the issue in this case.
9. Mr. Caesar gave no evidence of observations made by him in relation to his deceased daughter's condition nor did he comment on any observation of deterioration of her condition. Save for the fact that the deceased's death certificate revealed that she died from Broncho-pneumonia, the Court had no evidence before it as to the nature of this condition, the manner in which the condition is likely to occur or the treatment usually associated with such a condition. The Court did not have the benefit of any information as it related to the course of treatment administered to the deceased.
10. The evidence of Lisa Caesar also failed to provide information that could have assisted the Court in determining whether or not the Defendant failed to effectively discharge the

duty of care that it had to the deceased and that her death was as a result of the negligent treatment or lack thereof to which she was subjected.

11. The Claimants had an obligation to prove their case and to adduce the requisite evidence that the Court could consider and determine whether on a balance of probabilities the Defendant was negligent in relation to the care and treatment of the deceased and whether her death was as a result of the failure to properly discharge the duty of care towards her.
12. The Claimants submitted that the court ought to draw adverse inferences against the Defendant having regard to the fact that the Defendant has either suppressed and or deliberately failed to disclose relevant information. By letters written on behalf of the Defendant dated November 13th 2006 and June 26, 2007, Attorneys for the Defendant indicated that the Defendant would supply the medical reports that were requested and on the 30th April 2009, Ms Cudjoe who is a senior Legal officer for the Defendant, indicated to the then Presiding Judge that the Defendant found no records except the patient's cards which indicated that the deceased was a patient at the San Fernando General Hospital and that Dr. Krishan Maharaj may have been the neuro surgeon who attended to her, notwithstanding this representation, not even the patient's cards were disclosed.
13. The Court accepts that it can draw adverse inferences at trial in relation to absent documents where a party has failed to provide same. There is no evidence to suggest any of the documents in relation to the deceased were destroyed by the Defendant, as was the case in the **Malhotra vs Dhawan** (1977) 8 Med LR 319. The tendering of medical records would have assisted the Court in determining the nature of the treatment given to the deceased both in relation to the surgery and the development of any other condition such as gangrene.
14. The Claimants however failed to lead the required evidence to support a case of negligence against the Defendant. Having been informed that Dr. Maharaj may have been the neurosurgeon, steps could have been taken to obtain information from him but the Claimants failed to do this. On the evidence presented before this Court, the issue as to whether or not the Court accepts or rejects the Claimants evidence does not arise as there

is insufficient evidence of negligence before the Court. The witness statements contained no details as the events that transpired after the surgery and up to the deceased's death. No medical evidence was adduced and the Court was asked to infer that in the circumstances where according to the Claimants the deceased was operated on for a brain tumor and died from broncho-pneumonia, that the Defendant must have been negligent. Such an inference simply cannot be drawn on the evidence.

15. The tragic circumstances that lead to the deceased's demise have been compounded by the fact that the case before this court was not properly prepared. The Court however cannot be guided by sympathy and must objectively have regard to the evidence that is before it.
16. The Court on the evidence, is unable to outline or identify the factors that led to the unfortunate demise of the deceased and there is no evidence before the Court upon which the Court could hold on a balance of probabilities that the Defendant was in fact negligent and that the deceased died as a result of that negligence. Accordingly the Claimants' case has to be and is hereby dismissed.
17. The Court feels constrained in this matter to comment on the manner in which the Defendant conducted the litigation herein, the Defendant failed, refused and/or neglected to furnish the Claimants' with any documentation with respect to the treatment afforded to the deceased. No such documentation was annexed to the defence nor the Defendant outlined the treatment that was afforded to the deceased.
18. The Defendant discharges a public function where free medical care is afforded to citizens. In such a circumstance there must be an obligation to discharge its functions efficiently and effectively and there must always be public accountability. Any documentation in relation to the deceased's treatment ought to have been disclosed and if the documentation was misplaced or lost, then attempts ought to have been made to contact and obtain statements from the doctors and nurses who treated the deceased. Public officials and functionaries must always be accountable for their actions. The Ministry of Health would be well advised to conduct an enquiry into this matter and the course adopted in this matter ought never to be repeated.

19. Having considered the history of this matter, the lack of assistance and information from the Defendant including its failure to file witness statements, the Court in the exercise of its discretion hereby makes no order for costs and the Claimants' case is therefore dismissed with no order as to costs.

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**FRANK SEEPERSAD**

**JUDGE**