



Neutral Citation Number: [2021] EWHC 443 (QB)

Case No: C90MA353

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LIVERPOOL DISTRICT REGISTRY

Date: 26th February 2021

Before :

MR JUSTICE FORDHAM

Between :

(1) SSA	<u>Claimants</u>
(a child by SLV, the Litigation Friend)	
(2) SLV	
- and -	
LIVERPOOL WOMEN'S NHS FOUNDATION	<u>Defendant</u>
TRUST	

James Rowley QC (instructed by Irwin Mitchell) for the **Claimant**
William Edis QC (instructed by Hill Dickinson) for the **Defendant**

Hearing date: 26.2.21

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. The purpose of today's hearing is for me to consider whether the proposed settlement of the First Claimant's damages claim is in his best interests. The mode of hearing was a remote hearing by Microsoft Teams. That mode of hearing did not involve any prejudice to the interests of any party. I am satisfied that it was necessary and appropriate to have a remote hearing at this time of the pandemic. A remote hearing eliminated any risk to any person from having to travel to a court room, or be present in a court room. The open justice principle has been secured. This case and its start time were published in the Court's cause list. Also published was an email address that could be used by any member of the press or public who wished to observe this public hearing.
2. At the start of the hearing I made an anonymity order, to which there was no challenge or objection, in accordance with the principles explained by the Court of Appeal in X v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96 [2015] 1 WLR 3647. It is important that there is no doubt or confusion as to what can and cannot be reported. In the light of that, and because the anonymity order is such an important protection for the First Claimant and the family, I am not going to use names or addresses or specific dates in this judgment. For that reason – to protect them – I will refer to the First Claimant as (“the Claimant”). I will also refer to “mum” and “dad”. Mum is the second claimant and her claim for personal injuries has been the subject of a settlement which does not need the Court's approval. Mum is also the Claimant's litigation friend. As well as dad, there are two brothers in the family.
3. The Claimant is 7 years old. He was born at Liverpool Women's Hospital in 2013. The case advanced on his behalf is that there was a failure on the part of the midwives to take seriously mum's intense pain, which became continuous, as she came to the end of the first stage and approached the second stage of her labour, and a consequent failure in fetal monitoring. Mum was in fact suffering a progressive rupture of the uterus. If a Caesarean Section had been commenced earlier, as it should have been, the Claimant would not have suffered the permanent brain injury which he did. During the proceedings, liability was eventually admitted including causation, and the settlement is on a full liability basis. The Claimant suffered acute profound hypoxia ischaemia in the minutes before and immediately after his delivery. He has 4-limbed cerebral palsy characterised by dystonia, with some elements of learning difficulties. He is doubly incontinent and has a gastrostomy through which he takes most of his fluids and medication. A very substantial financial package is needed to address the Claimant's complex needs, throughout his life.
4. What is proposed is that there should be a lump sum award of £9 million together with ASHE 6115 index-linked annual periodical payments every December: of £187,500 in 2021 and 2022, then £205,000 for 2023 through 2026, £215,000 for 2027 through 2031, then £255,000 from 2032 for the rest of the Claimant's life. There are proposed deductions of £700,000 for interim payments made, CRU of £22,842.40, and a sum of £153,430.50 held on trust for mum and dad in respect of what the law calls their “gratuitous care” and their other past losses together with interest, for immediate distribution to them. The overall capitalised value of the award has been assessed at just over £25.5 million. A Deputy has been appointed.

5. I have had the benefit of reading the detailed and thorough Opinion written by James Rowley QC which sets out fully the reasons why the Claimant's legal team consider that a settlement in this form and in these figures is in his best interests. Having considered it carefully, together with the other papers in the case to which I was referred, including a financial report written in October 2020 dealing with the virtues in this case of periodical payments, I am satisfied that the materials provide all the information that this Court needs and no further report is needed, and I agree that this is a sensible settlement from the Claimant's point of view. Mum and dad will be assured that there will always be sufficient funding to maintain his care, particularly given the substantial periodical payments that are to be made throughout his life, and which are very important in this case. I am happy to give my approval to the settlement, including the various payments and deductions, I approve the payment of £153,430.50 for immediate distribution, and an order in the form proposed is appropriate and I make it.
6. Mr Edis QC on behalf of the Defendant has paid a warm tribute in open court today to the dedicated care which the Claimant has received from his loving and supportive family. Mr Edis tells me that normally in a case like this there would have been, or would now be, a letter of apology and he assures me – and I do regard this as important – that this is something that will be looked into.
7. Thanks to Mr Rowley QC and the rest of the Claimant's team, I have been able read about the Claimant, about the family, about mum and dad, and about the brothers too. I have read a description – written for me as the Judge – which tells me how the love and dedication of mum and dad shine out; how they have borne the immense pressures of caring for the Claimant, and of this litigation, with such fortitude; how they were so badly let down at the hospital back in 2013; and about the huge debt of gratitude which society owes mum and dad for all they have done and will continue to do for the Claimant, a debt which no amount of damages can ever repay. It is important in these cases that, alongside the rigorous exercise of dispassionate objective analysis which lawyers and Judges must perform to consider the suitability and adequacy of a damages settlement, we can also pause to reflect – as best we are able – especially because it can be hard for any of us to find appropriate, adequate words.
8. The love, dedication and support of mum and dad do shine through the pages I have read in this case. I have also read about the Claimant. He's only seven. I can picture him in his wheelchair, taking steps with supervision and support, riding his adapted tricycle, or swiping his Leapfrog tablet or his Mypad, and changing the channel on the TV with the remote control. Mum described him as a bit of a messy eater who does not like the sound of hairdryers and won't wear a hat, hood or sunglasses. She said the focus of the family has been on keeping him happy and calm. Dad says if the Claimant is happy, then everybody else in the family is happy. With intensive therapy, the Claimant has been enabled to communicate. From what I read, some people have underestimated him. Sometimes, he surprises them, and maybe even defies their assumptions. Someone in his team had the brilliant idea of exhibiting to a witness statement a great picture of him, with a beaming smile, loving a fairground ride.
9. There is always a team for a claimant in a case like this. The team starts with mum and dad, the brothers, then the lawyers and experts, supporters and friends. I am confident that the claimant would want me on his behalf to thank everyone in that

team, that mum and dad would want to do so, and that the team members would also want to thank each other. With that confidence, I am able – publicly – to record that gratitude.

26.2.21