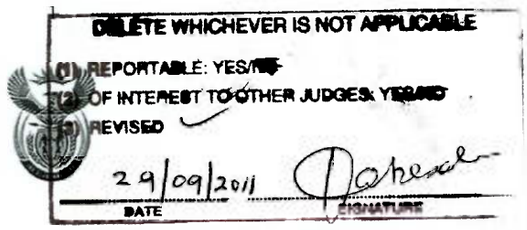

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

CASE NO: 25284/2009

4/10/2011

In the matter between:

DOREEN TOPHAM **Plaintiff**

and

MEMBER OF THE EXECUTIVE COMMITTEE
FOR THE DEPARTMENT OF HEALTH, MPUMALANGA **Defendant**

JUDGEMENT

Mabesele J

The plaintiff has instituted an action against the defendant for damages which the Plaintiff suffered due to negligent conduct of the defendant.

The plaintiff alleged that the medical personnel of the defendant misdiagnosed her hip dislocation on 01 May 2006, resulting in her suffering from a vascular necrosis of the right femur head.

The plaintiff is Doreen Topham, an adult female residing at 16 Francis street, Nelsville, in Nelspruit.

The defendant is a member of the executive committee for the department of health, Mpumalanga.

The matter proceeded on the merits only.

The defendant runs a properly licensed general hospital known as Rob Ferreira Hospital, in Nelspruit. The defendant provides facilities at aforementioned hospital, inter alia, to admit and treat victims of motor vehicle accident and provide for the pre and post-operative care of patients admitted at the hospital. The defendant has qualified medical personnel such as nurses and doctors.

In the early hours of 01 May 2006 the plaintiff got involved in a motor vehicle accident. The plaintiff was a passenger in

the said vehicle which was driven by her sister. Present in the vehicle, also, at the time of accident, was a boyfriend of the plaintiff's sister.

Immediately after the accident, said the plaintiff, she could not hear anything except pains on her body. She became unconscious. She recovered in the casualty unit in the hospital. She did not receive any medical treatment or examination, she said. Save medication which was given to her in the casualty unit, she was not given any medication on her discharge. She was discharged from the hospital on the same day on which she was admitted. She could not stand or walk properly when she left the hospital due to severe pains on her right hip. As a result, her brother-in-law carried her in a wheelchair into the mini-bus or kombi that was parked outside the hospital. On arrival at home and subsequent thereto she constantly felt severe pains on the same right hip.

On 08 May 2006 she consulted a private doctor for medical assessment of her right hip. The doctor, with the help of an x-ray, detected a dislocation of the hip. She was then referred back to Rob Ferreira Hospital for appropriate treatment.

The plaintiff's version that she did not sustain injuries from the time that she left the hospital on 01 May 2006 until such time that she consulted a private doctor was corroborated by her mother.

Doctor Van der Westheizen is a radiologist. He testified on behalf of the plaintiff. He provided an expert opinion, as a radiologist, on use of x-ray and clinical examination of patients involved in motor vehicle accident. Of importance from his evidence is that a clinical examination which is performed properly to determine possible presence of dislocation of bones in the human body may be relied upon without necessarily referring to or relying on the x-ray. He said an effective and proper clinical examination which is aimed at detecting possible presence of a dislocation of a hip should be performed, inter alia, as follows:

(i) The doctor who performs the examination should know the history of the patient.

(ii) The patient's affected joint should be able to move freely when the doctor gently moves it around.

(iii) The patient may be requested to stand upright. Adding to these tests, doctor Gerhard Kaizer, who detected a vascular necrosis of the right femur head on the plaintiff, stated the following:

(i) The patient should be asked to bend a hip which the patient complains about.

(ii) A vascular and nerve that supply blood to the affected leg should be examined.

According to doctor Kaizer who examined the plaintiff, two years after the accident, for purposes of road accident fund claim, the plaintiff developed a vascular necrosis of the right femur head as a result of non-treatment of her dislocated hip. According to his expert knowledge, he said, damage to the plaintiff's hip could have been prevented provided the said hip was operated within six hours from the time that the plaintiff was involved in the accident.

Doctor Thabo Molete took the stand. He was in the employ of Rob Ferreira Hospital in 2006. He had just completed his medical studies that year. However, said doctor Molete, he had been performing clinical examination on patients, as part of his practical work, from his third year of study of medicine until he completed his medical degree. He mentioned, however, that he always performed examination under supervision.

Doctor Molete performed clinical examination on the plaintiff in the early hours of 01 May 2006 after the plaintiff was referred to casualty unit by the nurses. The nurses had already examined the plaintiff's blood pressure, pulse and respiratory system, as required of them (the results of the examination appear on page 152 of the bundle). The nurses were suspicious of a fracture of a femur as a result of motor vehicle accident.

The blood pressure, pulse and respiratory system of a patient are referred to as vitals, said the doctor. These vitals serve as signals to any doctor with regard to the condition of the patient who is under examination. Should the vitals reveal abnormalities, any doctor, according to the witness, should be extra cautious that the patient who is under clinical examination could be experiencing a severe pain or had sustained internal injuries such as internal bleeding. Under those circumstances, therefore, the doctor should be extremely cautious, the witness said. He said the readings of the vitals were recorded as follows:

(i) Blood pressure = 117/79

(ii) Pulse = 84

(iii) Respiratory = 16

These readings, he said, were normal, thus suggesting to him that the plaintiff was clinically stable. The plaintiff's cardio-

vascular system and the blood flow were normal. He then proceeded to test, in order to satisfying himself, as required by medical practice, whether the plaintiff was conscious. This, he did, inter alia, by greeting the plaintiff and asked her about her day. The plaintiff provided answers expected from a conscious patient. Thereafter he asked the plaintiff about pains on her body. The plaintiff responded that she felt pains on her mouth and right thigh. He then noted these complaints on a document numbered 152 in the bundle of documents. Despite the parts of the body mentioned to him, he clinically examined the plaintiff from the head to toe, generally, using his hands and instruments. Although he could no longer remember the exact tests which he performed on the plaintiff's right thigh due to number of patients he had seen and lapse of time since he examined the plaintiff, he is certain, he said, that he could not have omitted to perform the following:

(i) Touching the affected thigh with his fingers to elicit pain.

(ii) Moving around or pulling the affected leg to detect possible abnormalities;

(iii) Ensuring that the limb is straight. If not, that would be an indication of a fracture;

(iv) Checking whether or not a limb was swollen;

(v) Assessing nerves and vessels to determine free flow of blood to the affected leg.

The witness said what made him certain that he did not have omit to perform the said tests is that he always perform same tests to patients involved in motor accidents and those who sustained injuries from sport. This explanation leaves me with no doubt that the doctor performed these tests on the plaintiff. He said he performed the tests on the plaintiff after he had sent the plaintiff for an x-ray(the results of which did not help much due to its poor quality)

When he was asked why would the plaintiff leave the hospital on a wheelchair if she had no pains, he responded that it is not unusual for the patients to leave hospital with pains after treatment.

The version of this witness that he clinically examined the plaintiff after the latter had complained of pains on the mouth and thigh was not disputed. Therefore, the version of the plaintiff that she was never examined and was unconscious in the casualty unit is not true. Again, the plaintiff's version that she complained of pains on the right hip cannot be said to be true. The reason is that the plaintiff, on her own version, was unconscious in the casualty unit. Therefore, the doctor's version insofar as it relates to what he said the plaintiff

complained about, stands. The doctor, through demonstration in the witness box, clearly, differentiated a thigh from a hip. He explained, however, that a thigh stretches up to the pelvis where a hip is located. This explanation suggest to me that a thigh cannot be separated, totally, from the hip.
Despite the plaintiff's failure to have alerted the doctor about the pain on her right hip, the question still remains as whether or not the doctor was negligent by his failure to have detected dislocation on the hip of the plaintiff on 01 May 2006.

According to the plaintiff's particulars of claim, the doctor and nurses were negligent as follows:

(i) They neglected to diagnose an anterior dislocation of the right hip of the plaintiff.
(ii) They failed to realise that there were abnormalities of the right hip joint.
(iii) They neglected to treat the plaintiff for the anterior dislocation of the right hip properly and/or timeously.
(iv) They failed to take such steps as were reasonable to ensure that the plaintiff did not suffer any harm or damage.

Negligence occurs when a person is blamed for an attitude or conduct of carelessness, thoughtlessness or imprudence

because, by giving insufficient attention to his actions, he failed to adhere to the standard of care legally required of him.[1] The criterion adopted by our law in this regard is the objective standard of the reasonable person. Therefore, the person is negligent if the reasonable person in his position would have acted differently if the unlawful causing of damage was reasonably foreseeable and preventable. In Kruger v Coetzee[2] the following was said:

> For the purposes of liability culpa arises if-
>
> (a) A diligens paterfamilias in the position of the defendant-
>
> (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him loss; and
>
> (ii) would take reasonable steps to guard against such occurrences; and
>
> (b) the defendant failed to take such steps.

Doctor Van der Westheizen testified that clinical examination to determine possible dislocation of a bone is an accepted scientific method in the medical field if an x-ray is not utilized. This is the method which doctor Molete utilized to determine abnormalities on the plaintiff.

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[1] Neethling et al, Law of delict p.116
[2] 1966(2) 428 (A)

Despite inexperience on the part of doctor Molete, he explored same tests suggested by both medical experts for the plaintiff, thereby, clearly, adhering to the standard of care required of him. In particular, the doctor moved around or pulled the affected thigh (which is connected to the pelvis where a hip is located) to detect possible abnormalities. Most importantly, he assessed the nerves and vessels to determine free flow of blood from where the thigh is connected to the pelvis through the entire leg. He always made certain that the limb was kept straight to determine a possible fracture.

The doctor did not focus, only, on the painful areas pointed out to him by the patient. Instead, he examined the patient from head to toe, as clearly reflected on page 152 of bundle of documents. He was guided, also, by vitals which did not reveal abnormalities on the patient.

The doctor did not examine the plaintiff's hip, specifically. He properly examined the thigh which was complained about and is connected to the pelvis where a hip is located. To my mind, therefore, thorough examination of the thigh through appropriate tests did cover pelvis and hip.

I am not unmindful of the fact that a medical practitioner who treats a patient is expected to adhere to the standard of care required of him and to take reasonable steps to prevent any possible foreseeable harm which the patient may suffer. This, to my mind, suggests that a medical practitioner cannot be expected to successfully prevent harm from occurring, but should take reasonable steps to prevent such occurrence. Therefore, a medical practitioner may not be accused for failure to diagnose certain illness after he or she had taken reasonable steps to do so.

In the present case, the medical practitioner misdiagnosed hip dislocation despite performing correct tests to determine the problem. He did not concentrate, only, on parts which the plaintiff complained about. Instead, he examined the plaintiff from the head to toe, guided by vitals. In my view, therefore, the doctor took reasonable steps to guard against harm on the part of the plaintiff. Moreover, it should be borne in mind that medical practioners cannot be expected to demonstrate impossible standards when they treat patients.[3] What is clearly expected of them is adherence to standard of care.

[3] Monteoli v Woolworths (Pty) LTD 2004(4) SA 735 (WLD)

Counsel for the plaintiff argued that the vitals which the doctor relied on as guidance should be ignored in that they were prepared by nurses. This argument has no merit, in my view, in that it is a standard procedure in the hospital, according to doctor Molete, that vitals are prepared by professional nurses before patients are referred to the doctors for treatment.

In the result, I make the following order:

The plaintiff's claim is dismissed with costs.

M.M MABESELE

(Judge of the South Gauteng High Court)