

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2015-04305

Between

VERN KHAN

Claimant

And

NORTH CENTRAL REGIONAL HEALTH AUTHORITY

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Ms. Pavitra Ramharack instructed by Mr. Brandon Srju

Defendant: Mr. Colin Blaize and Mr. Farai Hove Masaisai instructed by Hove and Associates

Date of Delivery: December 9, 2025

JUDGMENT

The Claim

- [1] The Claimant was admitted into the Emergency Unit of the Eric Williams Medical Sciences Complex on April 19, 2011 following his involvement in a motor vehicular accident which resulted in injury.
- [2] The Claimant was diagnosed with a Monteggia fracture of his right arm and admitted to the Orthopaedic Ward of said Eric Williams Medical Sciences Complex. He underwent surgery for said Monteggia fracture on May 9, 2011 after a waiting period of nineteen (19) days and was discharged on May 11, 2011. He asserted that prior to discharge, he was neither examined nor advised by an Orthopaedic Specialist or Consultant. Further, no x-ray of the injury site was conducted post-surgery despite a recording of subluxation on the Claimant's patient notes which indicated instability of the affected joint.
- [3] The Claimant's postsurgical treatment included a series of clinic appointments beginning on May 24, 2011. At the first said appointment, the Claimant was examined by a house officer, informed that his injury was healed and proceeded to have the back slab stabilising his arm removed. No x-ray of the Claimant's arm was conducted on this occasion and he was discharged without examination by an orthopaedic specialist.
- [4] At the subsequent Clinic date on July 12, 2011 an x-ray was performed and it was noted that the Claimant's arm had an angulated ulna and a dislocated radial head. He was advised that further surgery was required and would be contacted to confirm a date for same. On March 9, 2012 at a subsequent Clinic appointment a repeat x-ray was done and the Claimant was scheduled for surgery on May 2, 2012. The Claimant was informed that the surgery could not be accommodated on the scheduled date. At a subsequent Clinic appointment on August 24, 2012, x-rays were requested and a review date of September 7, 2012 was scheduled. The Claimant was informed that a tentative date was to be given for his surgery but no such date was provided and he was instead requested to return for a review on June 24, 2013.
- [5] On March 8, 2015, the Claimant sought the expert advice of one Dr Stephen Ramroop, Specialist Surgeon in orthopaedic and trauma surgery. The said Dr Ramroop prepared a medical report.

- [6] The Claimant pleaded that to date, he has not been contacted with a confirmation date for surgery to repair said angulated ulna and radial head discovered by x-ray on July 12, 2011.
- [7] The Claimant contended that the Defendant's doctors committed several acts of medical negligence including but not limited to: the failure to exercise reasonable care and skill in treating him; the failure to perform the initial surgery in a reasonable time following the accident; the failure to properly manage the Claimant's recovery by negligently informing him that his injury had healed without taking an x-ray to evidence the same; the failure to apply best practice postsurgical procedure in the removal of the Claimant's staples and instead removing an entire back slab which was neither damaged nor soiled; the failure to advise and inform the Claimant of the meaning of the term back-slab and why further stabilisation of his arm by same was important for recovery; the failure to involve a Specialist Medical Officer or Consultant in the management of the Claimant's recovery for the purpose of examination and review of the site of surgery to advise the Claimant on proper postsurgical injury management; the decision to discharge the Claimant from the Clinic without stabilising his arm and stating that the arm had healed without any x-ray evidence in support of such statement and the unreasonable delay to book a date for surgery to repair the angulation and dislocation discovered by x-ray in July 2011.
- [8] The Claimant averred that the disability of his right arm is a direct result of the Defendant's negligence in the management of his injury. The Claimant averred further that he has lost the function of his right arm and as a natural righthander, the said disability of his right arm has rendered him unable to properly perform the regular activities of daily living. He was unable to return to his job as a Gaming Machine Technician and is currently unemployed as it is impossible to now perform the technical and labour-intensive work that was his trade prior to said surgery.
- [9] It was contended by the Claimant that as a result of the Defendant's negligence, the he has lost the use of said right arm and has suffered severe financial, emotional and physical hardship which he would have otherwise not endured. He incurred Special Damages which include but are not limited to the cost of corrective surgery in the sum of one hundred and twenty thousand dollars (\$120,000.00); past loss of earnings in the sum of four hundred and sixteen thousand dollars (\$416,000.00), calculated from July 12, 2011 which is the date at which the dislocation of the joint was discovered by x-ray; medical expenses inclusive of the independent medical report, in the sum

of ten thousand dollars (\$10,000.00) and travelling expenses in the sum of two thousand dollars (\$2,000.00).

[10] The Claimant claimed against the Defendant the following Reliefs:

- i. General Damages, including loss of future earnings, incurred as a result of medical negligence.
- ii. Special Damages in the sum of five hundred and forty-eight thousand dollars (\$548,000.00) including but not limited to past and future medical expenses including the cost of reparative surgery and loss of earnings.
- iii. Interest.
- iv. Costs.
- v. Any other and/or further order that the Court deems fit in the circumstances.

Amended Defence

[11] The Defendant pleaded that the Claimant was last seen at Clinic at the Eric Williams Medical Sciences Complex on September 14, 2012 when he asked for his surgery to be scheduled in October 2012, however he never returned to the Eric Williams Medical Sciences Complex since that day. The Defendant asserted that up to that time it was observed that the Claimant had not lost significant use of his right arm.

[12] It was denied that Dr Ramroop's report amounts to an independent medical opinion for the following reasons:

- i. Dr Ramroop failed to consult any of the attending medical professionals involved in the care of the Claimant before rendering his opinion.
- ii. Dr Ramroop failed to take into account the other injuries suffered by the Claimant including several consultations namely, psychiatric, neurology and neurosurgery in the general medical management of the Claimant.

- iii. Dr Ramroop especially disregarded the several endorsements made by the medical professionals involved in the care of the Claimant in the Claimant's medical notes concerning the Claimant's chronic nicotine and alcohol dependence and therefore Dr Ramroop failed to consider and evaluate the influence and impact same would have on the healing process of the fracture and osteosynthesis.

[13] The Defendant denied the content of Dr Ramroop's and averred that it relies on the Claimant's medical notes filed in support of his claim instead.

[14] The Defendant pleaded that the Claimant was seen at the Eric Williams Medical Sciences Complex on April 19, 2011 at 7:57p.m. with a complaint of having been involved in a motor vehicle accident. From the observations of both the attending Doctor and Nurse, the Claimant was diagnosed *inter alia* as being under the influence of alcohol. The Claimant was admitted to the Emergency Unit of the Eric Williams Medical Sciences Complex for treatment on April 19, 2012 with a history of motor vehicle accident where his car fell from a height of thirty feet (30ft.) and the patient was thrown out of the vehicle. The Claimant not only had a Monteggia fracture that is, right forearm and elbow deformity secondary to ulna fracture and radial head dislocation, but also:

- i. He was alcohol intoxicated.
- ii. He had right facial nerve palsy.

[15] It was pleaded that the Claimant was referred to the Psychiatry Clinic because of his depression, alcohol intoxication and withdrawal and nicotine dependence. In addition, initial blood investigations revealed that the Claimant had a very high white blood cell count which indicated that the Claimant was suffering from some sort of infection which warranted delaying major operative procedure. Further, amongst other treatments and ongoing investigations including computed tomography scans, the Claimant was started on steroid treatment for facial palsy.

[16] The Defendant further pleaded that the Claimant underwent a successful procedure which involved open reduction and internal fixation (ORIF) of the right ulna comminuted fracture with a butterfly bone fragment with appropriate plate and screws and reduction of the radial head dislocation. After the procedure the Claimant's right wrist, forearm and elbow was immobilised in

supination as it was the most stable position for the radial head reduced at the elbow. This procedure was performed by Dr Anil Kumar, Consultant Orthopaedic Surgeon who did advise that the dressings be changed within three (3) days and to discharge the Claimant.

- [17] The Defendant asserted that the Claimant's dressings were changed before discharge but admitted that no x-ray was performed. The Claimant was advised however to return to Orthopaedic Clinic within two (2) weeks and was also given prescription for antibiotics, analgesics and enalapril (antihypertensive) medications.
- [18] The Defendant denied that the Claimant was not examined prior to being discharged as asserted by the Claimant.
- [19] The Defendant averred that the Claimant returned to Orthopaedic Clinic on May 24, 2011 where he was seen by a doctor. The Claimant's surgical site was inspected and skin staples were removed and it was confirmed that there were no skin infections and the incision was healing. The Claimant was not told that the bone fracture was healed and in fact the Claimant was advised to go back on his back-slab splint support in supination for another few weeks. The Claimant refused to have the back slab on.
- [20] The term 'back-slab' was explained to the patient on a previous occasion and not on May 24, 2011.
- [21] The Defendant averred that after the Claimant was seen on April 19, 2012 and he was scheduled for a repeat surgery on May 2, 2011, the locking plate and screws were requested for the operation. Further, after the patient was reviewed on September 14, 2012 he never revisited the Orthopaedic Clinic or any of the Defendant's institutions thereafter. The Claimant was scheduled to come into Clinic on June 21, 2013 and November 21, 2014 and did not attend the Clinic.
- [22] The Defendant denied the Claimant's allegations of negligence and responded as follows:
- i. That the servants and/or agents of the Defendant at all material times exercised that standard of care of a reasonably competent medical professional in treating the Claimant.
 - ii. In all the circumstances of the case, the Defendant's servants and/or agents performed the surgery in relation to the Claimant's fracture within a reasonable time.

[23] it was averred by the Defendant that the Claimant's failure to recover after his treatment was as a result of his own negligence. It was asserted that he contributed to this failure by:

- i. The Claimant's failure to use the back-slab.
- ii. The Claimant's alcohol abuse.
- iii. The Claimant's nicotine abuse.
- iv. The Claimant's failure to not return to the clinic at the appointed times.

Reply

[24] The Claimant pleaded that there are two issues which he has advanced by this claim – the Defendant's negligence in his preoperative and postoperative treatment by the Defendant relative to his admission to the Eric Williams Medical Sciences Complex post-accident on April 19, 2011 as well as the delay in performing corrective surgery to rectify their negligent performance of the first surgery.

[25] He denied that his claim was statute barred as asserted by the Defendant since the first limb of his claim (*supra*) arose in 2015 and the second in 2011. He pleaded that he had been engaged in settlement discussions with attorneys-at-law for the Defendant up until 2016; based on inferences drawn from representations to settle the claim, the Defendant is estopped from raising the issue of limitation.

[26] He pleaded that it was the Defendant who failed to contact him for the corrective surgery even though he had visited the Defendant's clinic as late as June 24, 2013. He also denied that he had had an infection which prevented the Defendant from performing the necessary corrective action. Mr. Khan stated that the term 'back-slab' was never explained to him.

Evidence

Dr Stephen Ramroop

- [27] Dr Ramroop, an orthopaedic and trauma surgeon, testified on behalf of the Claimant. He prepared a medical report dated January 5, 2014 in which he opined that there 'was clear evidence of negligence on the part of the medical team that attended to the Claimant throughout his care with the Defendant'.
- [28] In cross-examination, Dr Ramroop clarified that he had completed two reports on the Claimant – one in 2015 and an update on this report in 2024. He revealed that he had not seen any other medical report before compiling these reports on the Claimant's medical status. He later stated that his report was based on medical reports and the statement from the Claimant himself. He was aware that the Claimant had had a blackout at the wheel of his car and had crashed the car. He however denied that the Claimant's use of nicotine was mentioned in the medical notes. Contrary to his denial it was mentioned in the medical notes that the Claimant was a smoker.
- [29] He agreed with counsel for the Defendant that the decision whether or not to perform a surgical operation is within the discretion of the surgeon. He also conceded that his statement in his report that no x-ray had been done post the first operation was incorrect based on an entry on the Claimant's medical notes which revealed that an x-ray was done on may 9, 2011, postoperatively. Dr Ramroop agreed that the Claimant was given proper advice post operation to wear a cast after the back-slab was removed.
- [30] Dr Ramroop admitted that the Claimant received proper medical care while in hospital. He agreed that there was no delay in treating/monitoring the Claimant up to the day of his operation; additionally, those reports were readied before the date of the surgery. He contradicted what he had written in his report – that no specialist orthopaedic surgeon had been in charge of the Claimant's case. He could not account for the Claimant's delay in returning to the hospital to have the corrective surgery done, although he accepted that the Claimant went against the hospital's recommendation to replace his cast.
- [31] Notably, Dr Ramroop based his report without reference to any report from the Claimant's attending physicians.

Vern khan

- [32] Mr. Khan filed a witness statement in which he testified that he was forty-one years old when he underwent surgery at the Defendant's hospital. He testified that on the day of his accident he was admitted to the Eric Williams medical sciences complex for treatment. He was diagnosed with having sustained a Monteggia fracture and warded; he complained that he had to wait nineteen days for surgery on his arm without any reason being given to him for said delay.
- [33] He related that after surgery, on May 9, 2011, he heard Dr Kumar, consultant of the orthopaedic ward, order that an x-ray be performed on his arm before his discharge from the ward. Mr. Khan asserted that a change of his dressing was ordered but was never done prior to his discharge. Significantly, he claimed that no tests or examinations were conducted in order to confirm whether the post-surgery fixation was effective.
- [34] Mr. Khan asserted that he attended clinics at the hospital post-surgery; during the first visit on May 24, 2011, the back-slab stabilising his arm was removed in order to facilitate the staple removal. He said that he was asked whether he wanted the back-slab, which was very uncomfortable reapplied, however the doctor never explained to him the purpose of the back-slab or the importance of stabilisation of his injured arm. He claimed that a postoperative x-ray was performed for the first time on July 12, 2011 when he was informed that his arm had an angulated ulna and a dislocated radial head and surgery would be required. He was also told that he would be contacted about a date for said surgery. Mr. Khan asserted that he was never contacted by the Defendant about a date for surgery despite attending clinic after the promise of corrective surgery. At this last clinic visit he was discharged and told that he would be contacted about a date for surgery.
- [35] Mr. Khan testified that on March 9, 2012 he attended another clinic appointment; at this time, he still had normal use of his hand. Another x-ray was taken and he was advised that his corrective operation was fixed for May 2, 2012, however, prior to his date he was informed that his surgery had been rescheduled. He attended another clinic appointment on August 24, 2012 where further x-rays were ordered and a review date was given him. On the next date, September 7, 2012, he could not use his hand which was very painful; he accordingly asked for a date for his surgery in October 2012 but no date was given him and he was asked to return in June 2013. At this appointment, no further appointments were made. He continued to call the hospital about a date for his surgery, without success.

[36] In cross-examination, Mr. Khan admitted that the accident was caused by his negligence due to the fact that he was intoxicated while driving. He disclosed that during the nineteen day period that he was hospitalised before his surgery, he was constantly monitored by the medical staff employed by the Defendant; such monitoring included tests which he could not now recall. He insisted that when his cast was removed post-surgery on November 24, 2011, he had not been advised that he should put back on the cast. This contradicts his evidence in chief that he had been asked at his first clinic appointment whether he had wanted the cast/slab re-applied. He at first denied that this had occurred at his first post operation clinic and insisted that he had been told this at hospital; he later accepted that this was stated in his witness statement. When shown the statement in his medical notes that he had refused the back slab during his clinic visit, Mr Khan denied that this statement was true and insisted that nothing apart from the removal of the slab took place at that time. When confronted with his evidence in chief that he had refused the back slab¹, Khan again stated that this had occurred on another day.

[37] The Claimant denied that he had failed to contact the hospital to fix a date for his surgery or that he had missed calls from the hospital to fix a date for his surgery.

Evidence for the Defendant

Dr Anil Kumar

[38] Dr Kumar, a consultant orthopaedic surgeon employed by the Defendant, gave a witness statement and was cross examined.

[39] He testified that the Claimant came under his care in 2011 after his traffic accident. From the Claimant's medical records, Dr Khan stated that the Claimant was brought in to accident and emergency department, having reportedly been thrown out of his vehicle which had fallen from a height of thirty (30) feet. The emergency notes revealed that the Claimant was alcohol intoxicated and drowsy.

[40] Based on his presenting condition, the Claimant was diagnosed as follows;

¹ Paragraph 10 of Vern Khan's Witness Statement

- a. Alcohol intoxicated
- b. Right forearm and elbow deformity secondary to ulna fracture and radial head dislocation (Monteggia Fracture)
- c. Right facial nerve palsy

[41] Dr Khan stated that his elbow injury and fracture were neither life nor limb threatening; however, the medical staff considered it important to manage the Claimant's overall injuries, alcohol intoxication and withdrawal as well as his nicotine withdrawal since his overall clinical condition needed to improve before he could undergo surgery. Dr Kumar explained that the plan for management therefore consisted of his right forearm and elbow placed in a back-slap splint from the time of admission. He was initially treated for alcohol intoxication and facial palsy and further investigations and consultations were requested for treatable conditions of traumatic facial nerve palsy. On 25th April 2011, it was documented in the medical records that the Claimant was observed crying and looking depressed. The notes further document that the Claimant was more concerned about his facial palsy and the difficulty he encountered eating and drinking.

[42] Given his presenting condition, the Claimant's overall health had to be assessed prior to undertaking any surgery. This is standard medical practice which was also reasonable in the circumstances given that his initial blood investigation revealed he had a very high white blood cell count which indicated an ongoing infection.

[43] Furthermore, the Claimant was started on steroid treatment for the facial nerve palsy and given the clinical environment at the time (steroid and high WBC count) it was considered extremely high risk to perform an operation on a fracture as the risks associated with same included bone infection.

[44] Consequently, the Claimant was referred to the Psychiatric clinic as he presented with symptoms of depression, alcohol intoxication and withdrawal and nicotine dependence. His management required a multi-disciplinary approach with the involvement of varying clinics and consultations including Psychiatry, Neurology, Neurosurgery and Ear Nose and Throat before the surgical procedure could be undertaken.

- [45] In or around April 29th 2011, there was improved facial nerve function as a result of the steroid treatment (Dexamethasone) and on April 30th 2011, his back-slab splint of the right forearm was changed due to some swelling.
- [46] After the Claimant's progress, his surgery took place on May 9th 2011 which involved open reduction and internal fixation (ORIF) of the right ulna comminuted fracture with a butterfly bone fragment with appropriate plate and screws reduction of the radial head dislocation.
- [47] Following this procedure, his right wrist, forearm and elbow was immobilized in supination because it was the most stable position for the radial head reduced at the elbow. Dr Kumar gave instructions to change the dressing post-operatively before discharging the Claimant.
- [48] On May 11th 2011, the Claimant was discharged and instructed to return to the orthopaedic clinic in two (2) weeks. He was also given a prescription for antibiotics, analgesics and Enalapril (antihypertensive) medication.
- [49] On May 24th 2011, the Claimant returned to clinic and was reviewed. At the time of the surgery, there was a documented instability of the radial head, as such replacing and keeping the cast splint for at least eight to twelve weeks was extremely important for healing of the fracture and the ligamentous structures to maintain joint stability. The surgical site was inspected and skin staples were removed. In order to access to the skin staples, the back-slab splint had to be removed. It was confirmed that there were no skin infections and the incision was healing. The Claimant was also advised that the surgical skin incision was healed. However, the Claimant was not advised that the ulna bone fracture was healed as this was only two weeks post-operation and hence he was advised to replace the back-slab splint support in supination for another few weeks. Notwithstanding the clinical advice given, the Claimant refused to have the back-slab replaced.
- [50] It is standard practice to counsel patients on post-operative care and the treatment plans developed. The back-slab in question was worn by the Claimant since he was admitted to the ward and the need for the slab was explained to him. The Claimant was counselled, from the onset, of the type of back-slab and reason to be worn for a duration of time in order for the proper healing of the bone and ligaments. The Claimant was also counselled that the fracture could not have healed within two (2) weeks and therefore the requirement for the back-slab was instrumental to his healing.

- [51] Notwithstanding, the Claimant refused the replacement of the back-slab; it is not standard practice for the clinician to force a patient to comply with medical advice. The Claimant's refusal to comply with medical advice and/or instructions was properly documented in his medical records. It was also noted that the Claimant was also non-compliant with the referral given to him to attend the neurology clinic at the Port-of-Spain General Hospital.
- [52] On July 12th 2011, the Claimant returned to the orthopaedic clinic and an X-ray was performed. It revealed angulated ulna with re-dislocated radial head. This occurred as a result of there being no replacement of the back-slab which would have supported the supination and allowed the recovery and/or healing process to continue. Given this occurrence, the Claimant was scheduled for a repeat surgery.
- [53] The Claimant attended clinic thereafter for continued follow ups and monitoring until the surgery could be scheduled. After September 2012 the Claimant did not return to the clinic despite having scheduled appointments in June 2013 and November 2014.
- [54] Dr Kumar asserted that the Claimant was a chronic dependent of nicotine and alcohol. It is not uncommon for patients with these issues to not follow instructions. This dependency would have also adversely impacted and/or contributed to the non-healing of the fracture and failure of the osteosynthesis (the fixation of the bone). Furthermore, if these issues of dependency persist, any further orthopaedic surgery can lead to significant complications, failure of the fixation and even loss of limb. He opined that it was important to treat the Claimant before the first surgery could have been performed; however, this initial delay did not impact the fracture injury negatively. He reiterated that this was standard medical practice. However, the Claimant's refusal to replace the back slab directly impacted his healing and recovery and caused his injury to remain. He opined that the Claimant's failure to comply with the reasonable and sound medical advice given by his medical team materially contributed to his injury.
- [55] In cross examination, he revealed that he was familiar with the Claimant's notes made by doctors and nurses who treated him. He testified that he saw the Claimant one day after he had been referred to Orthopaedics with his medical team. He admitted that intoxication is not life threatening and that the Claimant would have sobered up well before nineteen days. Dr Kumar

asserted that operating on a patient with a high white cell blood count was very risky. He related that the patient was suicidal and threatened suicide if his facial palsy was not resolved.

[56] Dr Kumar testified that a post operation x-ray was performed, contrary to the pleaded case of the Defendant² He agreed that he had not stated in his evidence in chief that he had ordered a post operation x-ray, but it is stated in the medical notes, an agreed document. He explained that the back slab had to be taken off in order to remove the staples. Dr Kumar admitted that there was no entry in the notes indicating that the Claimant had been counselled about the use and importance of the back slab and without such counselling, it 'was possible' that he would not understand its importance. This witness asserted that without the back slab displacement/instability of the fracture would occur. He indicated that Khan may have been counselled by his team, but it was not documented and there was noncompliance by Khan.

[57] Dr Kumar also testified that that the remedial surgery needed to be performed as quickly as possible in order to correct the issue, but there had been unreasonable delay in performing same.

Analysis and Conclusion

[58] The issues for determination are as follows:

- a. Whether the Defendant owed the Claimant a duty of care?
- b. Whether the Defendant breach the duty of care?
- c. Whether there is a causal nexus between the Defendant's breach and the injury sustained by the Claimant?

[59] It is the Claimant's burden on a balance of probabilities to demonstrate that the Defendant owed a duty of care to the Claimant, the Defendant breached that duty and there was a nexus between the breach and the injury sustained by the Claimant.

² Paragraph 9 of the Defence

[60] In South West Regional Health Authority v Samdaye Harrilal Civil Appeal No. 60 of 2008, Mendonca JA stated:

“In the case of a public hospital, such as the San Fernando General Hospital, such a duty of care is beyond question. Indeed, it has been expressed as a fundamental proposition that the operation of a public or general hospital is “affected with a public interest”.

[61] Nair J in Bolam v Friern Hospital Management Committee [1957] 2 All ER 118 at paras 121 – 122:

“where you get a situation which involves the use of some special skill or competence, then the test whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got the special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill...A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular art...”

[62] Based on the Bolam test, it must be shown that the Defendant’s medical practitioners failed to act in accordance with the practice and standard accepted as proper by the reasonable body of medical men skilled in that particular art.

[63] It is accepted by both sides that the Defendant owed a duty of care to the Claimant; what the Claimant had to establish on a balance of probability, was a breach of that duty, and a causal nexus between the alleged breach and the harm sustained. In order to determine whether there was medical negligence in this case, I am guided by the principles outlined in the case of Bolam v Friern Hospital Management. In medical negligence claims, the legal burden of proof resides unequivocally with the Claimant, who must satisfy the tripartite test essential to tortious liability. The court has consistently emphasized the heightened evidentiary burden required in medical negligence litigation, given the technical complexity and reliance on expert testimony intrinsic to such claims. The principles most often quoted in the determination of whether a medical practitioner was negligent has been formulated by Mc Nair J in the case of Bolam -v- Friern Hospital Management Committee [1957] 2 All ER 118 at 121-122. Now commonly referred to as the Bolam test, Mc Nair J stated:

“... where you get a situation which involves the use of some special skill or competence, then the test whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art ... A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art ... Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view.”

[64] The Claimant was therefore required to establish that the medical practitioner failed to exercise a reasonable degree of skill and care, in that he failed to act in accordance with the practice accepted as proper by a reasonable body of medical men skilled in that particular art.

[65] In proving that a doctor deviated from the normal practice, Lord President Clyde in *Hunter v- Hanley* [1955] SC 200 at 206 stated that firstly it must be proved that there is a usual and normal practice. Secondly, that the defender has not adopted that practice and thirdly, of crucial importance, that the course adopted by the doctor is one which no professional man of ordinary skill would have taken if he had been acting with ordinary care.

[66] The Claimant pleaded³ several acts of negligence in the treatment and management of his injury by the Defendant’s medical staff, principal among which were:

- a. The failure to exercise reasonable care and skill in treating the Claimant
- b. The failure to perform the initial surgery in a reasonable time following the accident
- c. The failure to properly manage the Claimant’s recovery by negligently informing him that his injury had healed without taking an X-ray to evidence same

³ Paragraph 19 of the Statement of Case

- d. The failure to apply best practice post-surgical procedure in the removal of the Claimant's staples and instead of removing an entire back slab which was neither damaged nor soiled
- e. The failure to inform and advise the Claimant of the meaning of back slab and why further stabilization of his arm by same was important for recovery
- f. The failure to involve a Specialist Medical Officer or Consultant in the management of the Claimant's recovery for the purpose of examination and review of the site of the surgery to advise the Claimant on proper post-surgical injury management
- g. The decision to discharge the Claimant from the clinic without stabilizing his arm and stating that the arm had healed without any x-ray evidence in support
- h. The unreasonable delay to book a surgery to repair the angulation and dislocation discovered by x-ray taken on July 2011

[67] On the evidence before me, the Claimed failed to demonstrate a deviation from the standard of care expected of a reasonably competent medical professional; on the contrary, from the evidence of the Claimant's own witness, Dr Ramroop, the Claimant received proper care in hospital prior to and after the surgical procedure performed to repair his fracture. His evidence fell far short of establishing that the Defendant's decision to prioritize stabilization of the Claimant over immediate surgical intervention was outwith the range of reasonable professional practice. The Claimant's condition upon admission- intoxication, elevated blood pressure, elevated white blood cells and suicidal ideation supported the Defendant's decision to stabilize his physical and mental issues before surgery, and was, in my view, in line with established medical protocols for managing the Claimant's injury and mental health, elevated blood pressure and intoxication.

[68] Dr Ramroop's conclusion that there was negligence in the Claimant's treatment at the Defendant's hospital was undermined in several respects as outlined above:

- i. He failed to consult the attending physician before writing his report as required

- ii. He included inaccurate information on which he based his report- that no x-ray had been performed post-surgery on 9th May 2011 and prior to discharge despite the house officer's note that with the image intensifier a subluxation of the radial head was observed; he accepted, contradicting his own report that a post operation x-ray had been performed on the Claimant
- iii. Dr Ramroop alleged in his report that there had been no Specialist oversight of the Claimant during his hospitalization, surgery and treatment but this was untrue since Dr Kumar was the Claimant's attending Specialist and he acknowledged in cross examination that his assertion to the contrary was incorrect
- iv. He attempted during cross examination to introduce Apley's Orthopaedics as the basis for his analysis and conclusions but acknowledged that an assessment based on Apley's required him to consult with the attending physician which he failed to do
- v. In his report Dr Ramroop indicated that the nineteen (19) day delay before surgery was unjustified, inherently unreasonable and not in line with standard procedures; however during cross examination he admitted that the timing of surgery is within the attending physician's discretion, based on the patient's condition. He also admitted that a surgeon must assess all clinical factors before determining an appropriate surgical date.
- vi. Dr Ramroop also acknowledged that the Claimant refused to follow medical advice regarding the back slab, acknowledging that the medical notes revealed that Khan had indeed been advised to keep the back slab on but he refused to take that advice; this admission contradicted his report which implied that the hospital did not ensure the use of a back slab post-surgery

[69] The various inaccuracies in Dr Ramroop's medical report served to undermine its reliability. This was the evidence, in the main, upon which the Claimant relied to support his claim of negligence against the Defendant. Dr Ramroop's evidence, riddled with inaccuracies and inconsistencies could not support key aspects of negligence alleged by the Claimant.

[70] The Claimant's evidence also failed to establish on a balance of probability that the medical staff at the Defendant's hospital treated him negligently which resulted in further injury to him. His expert having agreed that he was managed and treated appropriately both pre and post-surgery

but for the delay in scheduling the corrective surgery, his claim of negligent treatment up to the date when he was advised to make an appointment for remedial surgery must fail.

[71] The Claimant's evidence on his post-surgical treatment also contained material inconsistencies. He denied that his arm was X-rayed after surgery which was false; he adopted the false assertion of Dr Ramroop that the Defendant failed to administer specialist care to him; he denied that he had been advised to re-apply the back slab but conceded that he refused to have it reinstalled. I am of the view that the failure to make a notation that the Claimant was counselled about the use and importance of the back slab does not mean that the attending doctor failed to do so especially in light of the evidence that he was advised to put it back on and he refused to do so. The Claimant disregarded medical advice to his own hurt and cannot now claim that the Defendant, through its medical staff failed to exercise the ordinary skill of ordinary competent doctors and healthcare professionals during the management of his care which caused him to suffer injury.

[72] While Dr Kumar admitted that there was unreasonable delay in scheduling a date for the Claimant's surgery, I must take Judicial notice of the fact that the Defendant runs public hospitals and except in cases of emergency, surgery has to be scheduled because of long waiting lists. The Claimant also bears some responsibility because he would have been aware of the need to make diligent and persistent inquiries about a date for remedial surgery in the given circumstances. There is also evidence before me that the hospital attempted to contact the Claimant unsuccessfully in order to fix a date for said surgery. Systemic delays within a public healthcare facility do not automatically amount to negligence unless there is deviation from the accepted standard of care. There is no evidence of a deviation of standard care in the treatment of the CI before me. Furthermore, I agree with the Defendant's submission that the delay in rescheduling the remedial surgery was due to hospital resource limitations as opposed to negligence. Dr Kumar's acknowledgement that there was delay in fixing a date does not amount to an admission of medical negligence nor does it meet the required standard of proof outlined in Bolam supra.

[73] In all the circumstances of this case I hold that the Claimant has failed to establish on a balance of probability that the Defendant's medical staff was negligent. The treatment given the Claimant met the standard of 'the ordinary skilled man exercising and professing to have that special skill'⁴. Even Dr Ramroop acknowledged that the Claimant's treatment at hospital pre operation and post was in accordance with standard treatment for that injury. The treatment given the Claimant was

⁴ See Bolam supra

also in accordance 'with a practice accepted as proper by a responsible body of medical men skilled in that particular art...'⁵.

[74] I accepted Dr Kumar's evidence regarding the necessity to treat the Claimant's other medical issues on his presentation at hospital before surgery; that a high white blood cell count and elevated blood pressure needed to be managed before surgery was attempted, which accounted for the nineteen (19) day period before his surgery. I also accepted, on the evidence that the Claimant had been advised of the importance of re-applying the back slab and he flouted the advice by refusing to have it re-applied, thereby contributing to the worsening of his condition. I also accept that efforts had been made to schedule the corrective surgery but due to a combination of issues including the Claimant's own lack of effort, and limited resources there has been delay, but this delay does not amount to negligence on the part of the Defendant.

[75] Lastly, I accepted the evidence of Dr Kumar but found the evidence of both Dr Ramroop and the Claimant unreliable for the reasons set forth above.

[76] In the circumstances I order that:

- a. There be judgment for the Defendant against the Claimant
- b. The Claimant's case is dismissed
- c. The Claimant do pay the Defendant's cost in the sum of \$14,000.00

Joan Charles

Judge

⁵ Bolam supra