

DUBE v ADMINISTRATOR, TRANSVAAL 1963 (4) SA 260 (W)

SUMMARY

- When a hospital accepts a patient its staff owes him a duty to attend to and treat him with due and proper care and skill.
- The hospital's practitioners must exercise that degree of care and skill which a reasonable practitioner would ordinarily have exercised in South Africa under similar circumstances.
- Any breach of that duty would constitute negligence.
- In an action for damages against a hospital, it appeared that plaintiff had attended an X-ray had revealed a comminuted fracture of the ulnar bone of the upper forearm near the elbow, and the arm had been set in plaster.
- He had attended again, when the hospital's medical practitioner had considered it satisfactory.
- He again saw that practitioner, with the hand grossly swollen and septic with loss of movement in the fingers.
- He was then admitted to hospital and treated for sepsis of the hand.
- In January, his arm had to be amputated. According to the medical evidence the plaintiff had sustained a Volkmann's Contracture, the signs whereof were generally manifest within 48 hours of the originating cause, often within a lesser time.
- The Court found on the evidence that the Volkmann started before 28th June and had become irreversible by the 3rd July, and the probable cause of the Volkmann was that the plaster was applied too tightly, but that arterial thrombosis or damage could not be ruled out as an additional cause.
- The Court accordingly found that the servants of the hospital had been negligent in one or more of the following respects: (1) applying the plaster initially too tightly; (2) failing to diagnose the possible onset of a Volkmann on the 28th June, and to take other measures to arrest the development of the Volkmann; and (3) failing to give the plaintiff on the 28th June a clear and unambiguous instruction and warning to return immediately if the pain persisted and/or swelling developed in the hand and fingers.

- *Held*, accordingly, that the hospital was liable for damages.
- *Held*, further, as the plaintiff's failure to return when the swelling started was attributable to the hospital's failure to instruct and warn the plaintiff clearly and unambiguously to return immediately any abnormal symptom was manifested, in consequence whereof the plaintiff reasonably believed or assumed that the persistence of the pain and the swelling he noticed were occurring in the ordinary course of healing and were not danger signs that he might lose the use of his arm if not attended to immediately, that the plaintiff had not been guilty of any contributory negligence in not returning until the 3rd July and that no apportionment of damages need be made.