
SUMMARY

- This case concerns the merits of a damages claim on behalf of a minor for a brain injury he sustained during his birth at a provincial hospital.
- It was the plaintiff's case that the injury was caused by the negligence — on a number of grounds — of the maternity ward's medical staff.
- The defendant (the MEC) conceded that the injury was caused by a prolonged constriction or blockage of blood supply to the brain but disputed that it was due to any negligence on the part of the nursing staff; and that even if they were negligent, it did not cause or contribute to the injury because it was common cause that the brain of the foetus also suffered a stroke during labour.
- The court confined its enquiry to the ground that medical staff had negligently failed in their duty to properly monitor or review for foetal distress during the approximately five-hour period between when Syntocinon — a scheduled drug with admittedly dangerous effects — had been administered to induce labour, and delivery. Crucially, the recordings of the cardio-topographic monitoring machine (CTG), on which the mother had been placed to monitor and record foetal distress, went missing without any explanation.
- This left the medical staff's (alleged) noting of the CTG data on the labour partogram — a half-hourly plotting of foetal vital signs — and their viva voce evidence of its (alleged) content as the only evidence of foetal distress.
- This evidence, contended the defendant (the MEC), demonstrated that the medical staff followed proper procedures in monitoring the patient and foetus.
- *Held:* The CTG records constituted the original and foundational documentary evidence, and the subsequent noting of the CTG data on the labour partogram and the vive voce evidence of its contents were hearsay evidence.
- This, together with the fact that no explanation for the disappearance of the CTG recordings was offered, and a high risk of unreliability (because the partogram had been tampered with

and significantly altered) would render both the partogram and the nursing sister's evidence as to what the CTG in fact recorded inadmissible hearsay.

- And, if it were correctly to be admitted, it fell to be rejected because she (the sister) was a dishonest witness who covered up, both in her evidence and by altering the partogram, the failure to properly monitor the mother and foetus.
- It was not disputed that Syntocinon was per se a dangerous drug that should be administered with care and constant monitoring. Also, since the defendant accepted that there was foetal distress, it would have been evident on the CTG and the staff should have taken remedial action.
- Accordingly, the plaintiff had demonstrated that the defendant was negligent in failing to properly monitor and review the progress of labour at least from the time that Syntocinon was administered.
- The evidence moreover demonstrated that the stroke was not an independent event but rather triggered by foetal distress — the depletion of oxygen and glucose to the child's brain resulting from the mother's contractions or strangulation by his umbilical cord.

Seemle: The inadmissibility of hearsay testimony was not the only consequence resulting from the failure to produce the original medical records which were under a hospital's control and where there was no acceptable explanation for its disappearance or alleged destruction. Such a failure may also result in — (i) an adverse inference being drawn that the missing records support the plaintiff's case in matters where the defendant produced other contemporaneous documents that had been altered, contained manufactured data or were otherwise questionable; and (ii) the application of the doctrine of *res ipsa loquitur* in appropriate cases. (Here the doctrine of *res ipsa loquitur* did not apply because the defence was able to demonstrate that the foetus suffered a stroke which may or may not inevitably have resulted in the injury; and the court was satisfied that, even without drawing inferences from the failure to produce the CTG recordings, the defendant's nursing staff failed in their duty to monitor the mother and foetus, either properly or at all, after Syntocinon was administered.)