SUPREME COURT JUDGMENT

DARNLEY V CROYDON HEALTH SERVICES NHS TRUST [2018] UKSC 50

Bradley Martin QC and Ruth Kennedy appeared for the Respondent NHS Trust. They were led by Philip Havers QC and instructed by Cassius Box of Capsticks.

The Supreme Court has handed down its judgment in this interesting and important claim.

On Monday 17 May 2010, the claimant was struck on the head by unknown assailants. Later that day, he went with a friend to the A&E department of (what was then) Mayday University Hospital, Croydon. The trial judge found that the receptionist told the appellant that he would have to go and sit down and that he would have to wait up to four to five hours before somebody looked at him. The claimant waited, but for only 19 minutes, and left for home with his friend without telling anyone. In fact, the claimant would have been seen by a triage nurse within about 30 minutes but was not told this. Had he been told this, the trial judge found he would not have left.

The claimant deteriorated shortly after arriving home. The fact that the claimant deteriorated at home meant that his treatment was delayed. He suffered permanent and serious injury which would have been avoided if he had not left A&E.

Who was responsible for the claimant's injuries: the hospital, by its receptionist, for providing incomplete and inaccurate information, or the claimant, for only waiting 19 minutes and leaving without telling anyone?

Bradley Martin QC
bmartinqc@2tg.co.uk
+44 (0)20 7822 1223

Ruth Kennedy
rkennedy@2tg.co.uk
+44 (0)20 7822 1192

In finding for the hospital, the trial judge and the Court of Appeal (by a 2:1 majority) adopted a number of arguments, including: it was not fair, just and reasonable that the hospital trust should owe a duty to provide accurate information about waiting times, there was no assumption of responsibility for the catastrophic consequences the claimant might suffer if he simply walked out of hospital, the information was provided as a courtesy by non-medical staff and the claimant was responsible for his own actions because he chose to leave the A&E department when he had in fact been advised to wait.

The Supreme Court, however, found for the claimant (by a 5:0 majority). Lord Lloyd-Jones (with whom the other Justices all agreed) found that:

1. As soon as the claimant attended seeking medical attention there was a patient hospital relationship. This was not a novel situation: it fell squarely within an established category of duty of care.
2. There was a duty not to provide misleading information which may foreseeably cause physical injury.
3. The standard required is that of an averagely competent and well-informed person performing the function of a receptionist at a department providing emergency medical care.
4. The hospital had been in breach of its duty of care. Patients such as the claimant "*should be provided on arrival, whether orally by the receptionist, by leaflet or prominent notice, accurate information that they would normally be seen by a triage nurse within 30 minutes*". Instead, the appellant "*was misinformed as to the true position and, as a result, misled as to the availability of medical assistance*".
5. It is not appropriate to distinguish between medical and non-medical staff. In this case, the non-medically qualified staff had been charged with providing accurate information.
6. Whilst the Supreme Court acknowledged that A&E departments operate in "*very difficult circumstances and under colossal pressure*" (and this might prove highly influential in many cases when assessing whether there has been a negligent breach of duty), it found the alleged undesirable social cost of imposing a duty of care in these circumstances was "*considerably over-stated*".
7. The claimant's decision to leave the hospital without waiting for treatment was reasonably foreseeable and was made, at least in part, on the basis of the misleading information that he would have to wait for up to four to five hours. The claimant, who was described as being "*in a particularly vulnerable condition*" was not responsible for his injury.

In one sense, the Supreme Court's decision does not change anything: the court ultimately applied existing legal principles to some rather unusual facts. The decision is however a timely and important reminder that all hospital staff must take reasonable steps to ensure patients are not provided with "misinformation". Reasonable care needs to be taken by all staff not to mislead patients as to the availability of medical assistance. This extends to information about when medical assistance is likely to be available.

2 Temple Gardens, London EC4Y 9AY
Tel +44 (0)20 7822 1200
Fax +44 (0)20 7822 1300
clerks@2tg.co.uk
www.2tg.co.uk

Both clinical and non-clinical staff must be made aware that A&E waiting time information provided to patients is not provided as a mere courtesy: it must be reasonably accurate and may have serious legal consequences if it is misleading.

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clerks@2tg.co.uk
www.2tg.co.uk