FROM DOCTOR TO HOSPITAL TO PIC: A SIGNIFICANT SHIFT IN MEDICAL LIABILITY

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A "person in charge" (PIC), as defined under Section 32 of the Private Healthcare Facilities and Services Act 1998, is an individual who possesses such qualifications, training, and experience as may be prescribed and who is responsible for the management and control of the private healthcare facility or service to which a licence or registration relates.

In *Nur Fuziatun binti Mohd Fadzli v Gombak Medical Centre Sdn Bhd & Ors* [2025] MLJU 4319, the Court of Appeal provided important clarification regarding the scope of a PIC's liability. The Court was tasked with determining whether a PIC, who bears a statutory duty to manage and control a private healthcare facility, owes a tortious duty of care to the patients of that facility.

The Plaintiff's Claim

The plaintiff, a minor, claimed to have suffered brain damages arising from the circumstances of her birth, resulting in cerebral palsy. Amongst the allegations of negligence, were failures relating to the hospital's referral system, absence of qualified specialists on standby, failure to diagnose fetal distress and the negligent undertaking a vacuum-assisted delivery. She sued the three respondents through her father and litigation representatives, namely:

(i) 1st Defendant: Gombak Medical Centre Sdn Bhd (GMC), a private medical facility where the plaintiff was delivered. GMC issued a notice of contribution and indemnity against the 2nd and 3rd Defendants.
(ii) 2nd Defendant: the PIC of GMC and head of the Obstetrics and Gynaecology Department.
(iii) 3rd Defendant: the doctor who undertook the delivery of the plaintiff.

High Court Dismisses Claim

The High Court dismissed the entirety of the Plaintiff's claim and struck out the notice of contribution, finding no negligence on the part of the 3rd Defendant and that causation had not been proven and consequently, the claim against the 1st and 2nd Defendants was dismissed as academic.

The High Court held, amongst others, that the absence of complete cardiotocography records prevented the court from finding the 3rd Defendant had acted in any way negligently. The Court further held that the presence

of light meconium-stained liquor does not provide conclusive proof that a foetus is in distress. With regard to the vacuum extraction delivery, the Court found that the delivery was carried out in accordance with accepted medical standards.

The Court Of Appeal: Systemic Failures

The Court of Appeal allowed the appeal against the 1st and 2nd Defendants and dismissed it against the 3rd Defendant, affirming that there was no negligence in the 3rd Defendant's diagnosis or delivery.

The Court held that the 2nd Defendant, as the PIC and head of the Obstetrics and Gynaecology Department owed a duty of care in tort to patients, to take reasonable care in the running of the hospital so as to prevent its patients from harm. The Court held that there existed sufficient proximity between the 2nd Defendant and the Plaintiff as to give rise to a duty of care owed by the 2nd Defendant to the Plaintiff.

The Duty To Make Available Paediatric Care

The Court of Appeal held that there existed a duty on both the 1st and 2nd Defendants to ensure that there would be timely access to all medical experts (including specialists in anaesthesiology and neo-natal care) as would be necessary to deal with complications that could reasonably be expected to arise at childbirth. This duty does not extend to the 3rd Defendant, as the physician undertaking the delivery of the baby.

The Delay To Transfer

The Plaintiff argued that the delay in transferring the Plaintiff to a hospital that had appropriate neo-natal intensive care facilities constituted a breach of the duty that was owed by the Defendants to the Plaintiff.

On 17.06.2014 at midnight, the Plaintiff was born. She was transferred to Hospital Pusrawi at 6:00am. Both experts in this case agreed that there was a delay on the part of the Defendants to refer the Plaintiff to a facility that had a neo-natal intensive care unit, or at least to have the Plaintiff to be monitored, assessed and managed by a paediatrician within the first 6 hours of birth.

The Court held that there had been an unacceptable delay in transferring the Plaintiff and that this delay breached the duty of care that was owed by the 1st and 2nd Defendants to the Plaintiff. In as far as the 3rd Defendant, the Court was satisfied that she had done all that she could have in the circumstances to ensure that the Plaintiff received the appropriate care in a timely manner, this included calling tertiary hospitals at around 2:30am and was unable to get a government hospital that would accept the transfer. It was only after she obtained the agreement of the father to ask a private hospital was she able to secure a place at Pusrawi at about 5:00am.

Failure To Diagnose Fetal Distress: Cardiotocography & Meconium Stain

The Court of Appeal asserted that the use and timing of CTG and Doppler monitoring were consistent with accepted practice. Light meconium alone did not require emergency caesarean section under any guideline. The 3rd Defendant's note "CTG still acceptable" showed ongoing monitoring throughout the 2nd stage of labour via a cardiotocogram.

The Court held that the fact that the 3rd Defendant had not proceeded with a caesarean section delivery did not constitute a breach of the duty of care owed by her to the Plaintiff. Further, the vacuum extraction technique stayed well within internationally recommended standards on pulls, cup detachments and time limit.

Causation

The Court found that the breach of duty on the part of the 1st and 2nd Defendants to provide timely access to neo-natal intensive care facilities materially and adversely contributed to the Plaintiff's condition. This was also the unanimous view of the experts who testified in this case.

The Court of Appeal allowed the appeal against the 1st and 2nd Defendants, dismissed the appeal against the 3rd Defendant, and directed that the case be sent back to the High Court for assessment of damages before a different judge, with the 1st and 2nd Defendants held jointly and severally liable for damages, pre and post-judgment interest, and RM100,000 in costs to the Plaintiff, while the Plaintiff was ordered to pay RM40,000 costs to the 3rd Defendant.

Commentary

A significant broadening of the scope of medical negligence, this case recognises and affirms the concept of system-based liability. The responsibilities of a PIC are operational and accountable, rather than merely titular. Oversight of staffing, referral systems, access to specialists may attract personal liability, even in the absence of a strict doctor-patient relationship.

In a claim for negligence, a Plaintiff must establish: (i) the existence of a duty of care; (ii) there was a breach of that duty; (iii) the breach caused damage; and (iv) that the damage was not too remote, in that it was a reasonably foreseeable consequence of the breach. In this case, it was established that the duty extended to the 2nd Defendant in his capacity as a PIC, requiring him to take reasonable care in the operation and management of the hospital facilities to prevent harm. At common law, a duty arose on the part of both the 1st and 2nd Defendants to ensure timely access to all medical specialists as would be necessary to deal with complications that could reasonably anticipated in childbirth.

The Court found that this duty was breached. A paediatrician specialising in neonatal care was not made available, whether on-call or for immediate consultation, at the

time of delivery. Further, there was a delay in transferring the Plaintiff to a hospital equipped with neonatal intensive care facilities. These were not treated as isolated clinical misjudgments, but as systemic failures in planning, access, and escalation protocols.

The harm did not arise solely from an individual act or omission in the delivery room, nor was liability confined to the treating practitioner. The absence of direct patient interaction will not insulate a PIC from liability where the alleged negligence arises from operational deficiencies within his or her remit.

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