

## *Rasmussen v South Western Sydney Local Health District* [2013] NSWSC 656

The plaintiff, Vanessa Rasmussen, was the mother of four day old Kaden Rasmussen, who died on 22 August 2007 at Liverpool Hospital. The defendant, South Western Sydney Local Health District, was the entity responsible for managing the hospital. The plaintiff gave birth on 18 August 2007. However, following complications with the birth Kaden suffered brain damage and was transferred to the intensive care unit. Four days later, the plaintiff made the decision to switch off Kaden's ventilation.

Devastated at the loss, the plaintiff could not face colleagues and decided to leave her job. She commenced a new role at a travel agent but had difficulty concentrating, made errors and resigned without serving out any period of notice. At home, she found herself unable to complete household tasks due to her mental state many of which her husband had to takeover. The plaintiff commenced work as a bank teller but continued to struggle as a result of her mental state.

The plaintiff gave birth to child, "A", in November 2010 and had a second child, "S", in March of 2012. The plaintiff became very anxious about leaving A in the care of others. She suffered post-natal depression which could be attributable to the death of Kaden.

On 18 August 2010, the plaintiff commenced proceedings against the defendant for a claim in negligence. The defendant admitted liability and accepted that the defendant had suffered psychiatric injury by reason of the death of her son.

### **Assessment of Damages**

In assessing damages, Adamson J found that the death of Kaden had changed the plaintiff substantially. In determining general damages, his Honour found that the plaintiff had become socially reclusive; anxious and overprotective of her children; and anxious about her performance at work. Whilst she was able to have children, progress through tertiary studies and was able to maintain a steady job, she remained vulnerable to stress, especially those associated with child birth and children. His Honour determined that she suffered 40% of the most extreme case of loss of enjoyment of life (40% of \$535,000.00).

With regards to loss of past earnings, the plaintiff argued that, but for the defendant's negligence, she would have worked continuously full time apart from periods of maternity leave. His Honour held however, that the most likely scenario would have been that the plaintiff worked on a part time basis after giving birth, until her youngest began school.

The plaintiff also claimed for future economic loss and argued that she had suffered a lifelong diminution of 50% of future earning capacity. The defendant argued that the plaintiff should be compensated on the basis that she will have a part time earning capacity until her youngest child reaches school age, after which she would be able to return to full time work.

His Honour determined however, that by reason of the plaintiff's financial circumstances, especially her mortgage, she would have to return to full time work, irrespective of the defendant's negligence. Nevertheless, his Honour concluded that the trauma of losing Kaden would result in some diminution of the plaintiff's future earning capacity as she had become more susceptible to "life's adverse events". Whilst her employer was sympathetic to her circumstances, her ability to obtain a promotion was uncertain. Adamson J refused to apply a mathematical formula for loss of future earnings as it was too difficult to determine. Instead he awarded a buffer of \$70,000.00 for future economic loss, inclusive of loss of future superannuation benefits.

The plaintiff made a claim for past and future medical treatment. The consensus of expert witness testimony was that the plaintiff required psychiatric treatment and anti-depressant medication. His Honour agreed and awarded the plaintiff an amount of \$17,503.60.

In relation to domestic assistance, whilst the plaintiff had psychological difficulties undertaking domestic or household tasks, she was able to nevertheless undertake these tasks unassisted. The court saw no need for future domestic assistance damages. However, his Honour determined that she would have needed domestic assistance in the six months after Kaden's death and awarded her an amount for past domestic assistance on the basis of 6 hours per week.

## Our observations

This case provides a useful illustration of the assessment of damages in cases where a plaintiff has suffered loss stemming from the death of their child during birth.

Awards of damages can be mitigated by a finding that the mother would have, on a balance of probabilities, worked part time until their youngest child reached schooling age.

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