



Successful claim of Medical Negligence

April 2018

Our office has successfully represented the claimants, the wife and children of a deceased patient, in medical negligence claim against the defendant doctor, a pathologist practicing in Nicosia. The District Court of Nicosia ruled in favour of the claimants, by adjudicating a substantial amount plus interest against the defendant.

On 6/12/2006 the deceased was taken by his colleagues to the defendant, as he had complained for chest pain and suspected a cardiac arrest. The deceased was at the time in obvious high risk condition for a myocardial infraction, as all the risk factors were presented. Namely, he was middle aged male, overweight and a heavy smoker. The defendant doctor examined the deceased and diagnosed him with anxiety disorder and prescribed a minor tranquilizer. Subsequently, the deceased went back home to his wife and children.

On the same date, at some time after 17:00, the deceased complained again to his wife that he was suffering from chest pain. His wife called the defendant at 18:15 to seek his advice, as she was worried about a potential heart failure. The defendant assured the deceased's wife that the pain was a result of the anxiety disorder which he had diagnosed earlier on that day, and advised that the deceased should be treated with the prescribed medication. The deceased continued suffering before his wife and children until he fainted at 20:30. Thereafter, he was immediately carried without his senses by family members to a car. While being midway to the General Hospital of Nicosia, the deceased was picked up by an ambulance. At 21:30 the deceased passed away. The autopsy confirmed that the death was caused by myocardial infraction.

Our litigation team brought a medical negligence claim against the defendant, alleging that the defendant had breached his duty of care to the deceased, by failing to diagnose properly the upcoming heart failure and to refer the deceased to the hospital. During the hearing, we presented the expert evidence of a leading practitioner, currently a Professor of Cardiology at the National Heart and Lung Institute of Imperial College London. The defendant insisted that his initial diagnosis of anxiety disorder was correct. However, he alleged that he had never insisted on his initial advice over the phone, as he advised the deceased's wife to take the deceased immediately to the hospital. Surprisingly though, the defendant did not present to the Court any medical records of the deceased, even though the latter had visited the doctor a few times in the past.

Interestingly, the defendant argued that his duty of care was not to be compared to the threshold set by the profession in the UK or abroad, but it had to be limited to what was expected from an ordinary doctor in Cyprus. On behalf of the claimants, we argued that it would have been detrimental and harmful against the public interest if the Court accepted that healthcare in Cyprus is justifiably subordinate or somehow inferior to what is objectively expected from any competent practitioner abroad.

In a very well-reasoned and justified judgment, the District Court of Nicosia dismissed the allegations of the defendant. The Court ruled that during the cross-examination the defendant kept making inconsistent statements and kept changing his position with the mere purpose of avoiding liability. The defendant's evidence lacked consistency and rationality, while the Court held that he had offered no satisfactory explanation as to why he had not kept any medical records, as he alleged. Therefore, the Court attributed no probative value to defendant's evidence and rejected his statements as the product of an untruthful witness. However, as a result of the lack of medical records, there was no substantial evidence before the Court regarding the exact symptoms of the deceased at the time of diagnosis, as the deceased and the defendant were the only persons present at the relevant time. Therefore, the Court was not in a position to determine the factual issue of whether the diagnosis was correct or wrong, even if the expert witnesses of both sides had explained to the Court the symptoms of an upcoming heart failure.

Nevertheless, the Court accepted our argument that the defendant had never advised the deceased's wife to take the latter to the hospital over the phone, as the wife had no reason to disobey his advice, especially as she was the one who sought the defendant's instructions, at a time when she particularly worried about her husband's condition. Rather the Court found that the defendant insisted that the deceased was simply suffering from stress. The Court explained the defendant was not in a position to make any diagnosis over the phone, especially as he had not asked for any clarification as to the symptoms present at the time. Therefore, under the circumstances, a reason-



able doctor exercising his profession with due care and skill had to refer the deceased to the hospital for further examination, especially as the latter was a high risk patient with chest pain. Needless to say, that stress is another risk factor for a heart failure. The defendant's negligent omission had caused the deceased's death, as he had deprived the latter from hospital treatment, which according to our expert would have offered a very high chance of survival. Subsequently, the claimants were entitled to damages for their loss.

Conclusively, the judgment upholds the professional standards which are expected from the medical profession in Cyprus, and indicates that the Cypriot judicial reasoning can be trusted as a source of high quality justice.

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