Neutral Citation Number: **[2020] EWHC 1676 (QB)**

Case No: QB-2018-000376
TLQ 18/1375

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice,
Strand, London, WC2A 2LL

Date: **24 June 2020**

Before :

Mr Justice Martin Spencer

- -

Between :

PQ (A Child proceeding by her father and litigation friend RS)	**Claimant**
- and -	
Royal Free London NHS Foundation Trust	**Defendant**

- -
- -

Lizanne Gumbel QC (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Owain Thomas QC (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing dates: **24th June 2020**

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APPROVED JUDGMENT

Mr Justice Martin Spencer **Wednesday, 24 June 2020**

1. In this matter I am asked to approve settlement of this claim which has been reached after two days of evidence. Although I will refer to the claimant by her name, this claim has been anonymised and no report of the claim shall identify the claimant or her family, in accordance with the anonymity order which has been made.

2. The position is that the claimant, to whom I shall refer as PQ, was born on [a date in] 2014 and so she is now five years and ten months old, coming up to her sixth birthday in a couple of months' time.

3. On the date that she was delivered her mother was admitted for induction of labour, having reached 12 days post-term and after the induction failed, the defendant's staff carried out an artificial rupture of membranes. Unfortunately, the physiological position was that there were fetal blood vessels in the membranes in a condition known as the velamentous insertion of the cord, or vasa praevia. The result was that with the artificial rupture of membranes there was a calamitous haemorrhage which resulted in an acute, profound hypoxic ischaemic condition, which after ten minutes led to progressive brain injury.

4. The defendant trust reacted with commendable speed in carrying out a Caesarean section, but unfortunately the delivery of PQ by Caesarean section was not in time to avoid all injury, but the actions of the trust will have almost certainly saved her life.

5. The burden of the liability trial, which I have heard over the last two days, has focused on whether the defendant should have proceeded to a Caesarean section on the basis of the cardiotocographic trace which started at 16.51 on 21 August and, if so, whether in association with delivery by Caesarean section there would or should have been an artificial rupture of membranes in any event.

6. If artificial rupture of membranes were carried out in any event, then the injury almost certainly could not have been avoided. It was the claimant's case that, given the stage of the mother's progress, namely she was still not in established labour but her cervix was only 2 centimetres dilated, there would have been no purpose in carrying out ARM because it was not feasible that this mother, with her lack of progress, would ever proceed to vaginal delivery. I heard evidence from Mr Penny, consultant obstetrician expert instructed on behalf of the claimant, yesterday that in his view the defendant should have proceeded straight to a Caesarean section without ARM and that the injury would have been avoided.

7. This settlement has occurred at a stage when I had yet to hear from the defendant's obstetric expert, Mr Derek Tuffnell, but it is his view, as disclosed in his report and in the joint expert report, that it was wholly reasonable for the defendant to have carried out ARM and that would have been the case even if there had been a decision to deliver by Caesarean section.

8. He went so far as to say in his report, at paragraph 28:

> "No reasonable obstetrician would consider Caesarean section without membrane rupture and therefore on that basis I cannot see that the outcome of this case could have been altered."

9. At paragraph 29 Mr Tuffnell said:

> "Every reasonable obstetrician would rupture the membranes to assess the liquor and encourage the progress of labour. Whilst Caesarean section would retrospectively have avoided the fetal bleeding, that would not be a reasonable prospective consideration."

10. Thus, the settlement has occurred at a stage when the matter was wholly undecided in my mind, I not having heard from Mr Tuffnell or heard argument in relation to the respective cases.

11. However, I can indicate that, given the strength of Mr Tuffnell's opinion as expressed in his report and in the joint statement, there remained a very strong risk that I would have found that, whilst many obstetricians would have done as Mr Penny said he would have done and proceeded to Caesarean section without ARM, there would nevertheless have been a reasonable body of obstetricians who would have done as Mr Tuffnell suggested and carried out ARM either of its own accord or even in association with a prospective Caesarean section. Had that been my finding, then the case would have failed on the basis of the Bolam test.

12. As I say, I had not formed any view, not having heard all the evidence and not having heard submissions, and therefore the two results were both in play, namely complete success for the claimant and complete success for the defendant.

13. In those circumstances, I take the view that the decision to settle this case is a wholly understandable and reasonable one and that it is in the best interests of this child that I should approve this settlement.

14. I can indicate that I am very much influenced in this regard by the fact that the claimant has the most excellent legal advice, both solicitors and counsel, and indeed the settlement which is proposed is one which had been proposed on behalf of the claimant in advance of this trial and so has not been influenced by anything which may have occurred in the course of the trial itself.

15. The proposal is that the claim should be settled for a lump sum of £2 million, and as part of my role in approving the settlement I need to consider whether such a settlement properly reflects the risks of the case at this stage.

16. It virtually follows from what I have already said that it must do so, because the risks include the risk of complete failure of the claim, and as I have stated that remained a very real risk at the stage at which the matter was settled between the parties, subject to the court's approval.

17. Whilst it might be thought that for an acute, profound hypoxic ischaemic injury of this kind a lump sum of £2 million is a low settlement compared to some of the settlements or orders or awards which have been made in other cases, there are a number of difficulties in this case even with the establishment of primary liability in relation to causation and those difficulties have been recognised by both the paediatric neurologists instructed for each side. This would therefore have been a difficult quantification because of the difficulty in distinguishing the parts of PQ's condition which are the consequence of the acute profound hypoxic ischaemic injury sustained at the time of her birth and the parts of her condition which may be attributable to a congenital or genetic problem which she would have had in any event.

18. In those circumstances, I have no doubt that to settle for this sum of money is a reasonable course which should and does commend itself to the court and in those circumstances this settlement is approved.