



Neutral Citation Number: [2024] EWHC 2499 (KB)

Case No: QB 2021-002739

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/10/2024

Before :

HHJ RAJEEV SHETTY

Between :

AXA
(a child suing by her Father and Litigation Friend
MXA)

Claimant

- and -

AIREDALE NHS FOUNDATION TRUST

Defendant

Miss Elizabeth Gumbel KC (instructed by **Field Fisher**) for the **Claimant**
Mr John Deacon (instructed by **Hempsons**) for the **Defendant**

Hearing dates: 2nd October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 2nd October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ RAJEEV SHETTY

HHJ Shetty :

1. This is an application for the court to give its approval of a settlement in a personal injury claim.
2. The Claimant is a child under CPR 21.2(2) and her father acts as her litigation friend. Professional deputies were appointed by Order of the Court of Protection dated 6th July 2022. An anonymity order has previously been made and that order will continue for the reasons set out in the previous order.

Background

3. This claim for damages arises from the induced labour of the Claimant's mother, and the Claimant's subsequent birth on 20th April 2019 at the Defendant's hospital. There were a number of clinical failures by the defendant which have been admitted by way of letter dated 1 April 2021. As a result of those failures, the Claimant suffered fetal bradycardia which resulted in an associated brain injury leading to cerebral palsy with dystonia, restricted mobility and impaired communication. The Claimant's condition is permanent and she will require round-the-clock care going into the future.
4. Judgment has been entered for the Claimant on a 100% basis on 13th January 2022. The matter was set down for a trial on the issue of quantum on 1st October 2024.

Approval

5. A huge amount of work has gone into preparing this case and evaluating the level of damages from both legal teams.
6. As is commonplace and sensible in personal injury claims, the parties have met at a round the table meeting which occurred on 19th August 2024. Although that did not result in immediate settlement, those discussions culminated in the defendant making an offer to settle soon after by way of a lump sum of £5,750,000; and periodical payments for care and case management of £147,500, £305,000, and £350,000; and £13,500 for the cost of the deputy. This would come to a total of £16,707,835 as a capitalised settlement offer. It is proposed that this settlement is approved.
7. I have had the benefit of reading the very thorough confidential Advice of Miss Gumbel KC dated 6th September 2024. It sets out the reasons why she considers the settlement in these figures and structured in this way would be in the Claimant's best interests. She has explained that the Claimant's father and litigation friend has been fully advised in relation to the settlement figure and indeed the periodical payments and the advantages and effect of those.
8. The purpose of today's hearing is for the court to consider whether the proposed settlement of damages as agreed between the parties is in the best interests of the Claimant. The court's approval of the settlement is required as the Claimant is still a child. The test is that the court must act in the best interest of the child and in the interests of justice and have regard to the overriding objective. The procedure is in place to provide an important and independent check on the settlement.

9. The Claimant's schedule of loss calculated to and from 1st October 2024 had a total capitalised value of £19,179,165 of which £11,025,408 relates to future care and case management costs that are likely to be provided by periodical payments. The remaining capital sum is £8,153,757. The defendant's counter-schedule is calculated to the same time frame and has a total capitalised value of £14,198,492 of which £9,579,393 relates to future care and case management costs that are likely to be provided by periodical payments. The remaining capital sum is £4,619,099.
10. When a proposed award includes periodical payments, the court is obliged to consider the appropriateness of the payment structure so as to ensure that it best meets the Claimant's needs having regard to the factors set out in the practice direction. These factors include the scale of the annual payments and the Claimant's and Defendant's preference.
11. The confidential advice goes through the claim in fine detail and is comprehensive and incredibly helpful to me in distilling the issues between the parties and ranges of possible assessment on various heads of damages. Having reviewed the terms of the settlement, it is clear that the figures proposed are well within the margins of what the court could assess.
12. I have also been able to read the material in support in the hearing bundles. The position of the parties is that periodical payments would be appropriate for care and case management and also appropriate for deputy costs from year 3. I agree that financial advice would not be necessary in the context of this case because it is unlikely to offer much otherwise than recommending periodical payments.
13. I am satisfied that I have all the information to be able to provide oversight on the settlement. I agree that the settlement level and its structure are sensible from the Claimant's perspective and that the sums are well within a reasonable range of damages that the court would have awarded. There are clear advantages in a case like this to periodical payments as the lifetime need of the Claimant may extend over many years. It is clearly in the Claimant's best interests and I have no hesitation in approving the settlement accordingly in the terms under the Order in front of me
14. I have read about the dedication of the Claimant's father and mother to the Claimant and her extensive needs. I appreciate that her care has led to a change in virtually every aspect of the family's life. I also appreciate the enduring stress and strain on the family following the events that have affected the Claimant so substantially. I am truly sorry to hear about everything that has happened. I know that money cannot put everything right and there is no substitute for health. However, I hope that the settlement and the Defendant's prompt apology will achieve some degree of closure and comfort for the family whilst of course knowing that damages can only do that to some limited extent. I wish the Claimant and her family all the very best for their future.

HHJ Shetty

2nd October 2024