

HIGH COURT OF AUSTRALIA

Cattanach v Melchior

16 July 2003

B22/2002

Summary

Facts

Mr and Mrs Melchior had two healthy children and had decided that they were happy with the size of their family and were not going to have any more. The couple had planned their finances around bringing up two children.

Mrs Melchior did not wish to continue taking oral contraceptives, and when her husband did not act on getting sterilized, she decided to undergo sterilisation herself. She consulted Dr. Cattanach and in doing so told him that when she was 15 her right fallopian tube had been removed. Dr Cattanach accepted his patient's assertion that her right fallopian tube had been removed, and therefore did not advise her to have that specifically investigated. He also did not warn her that, if she was wrong about that, there was a risk that she might conceive. He subsequently only attended to her left fallopian tube in the sterilisation operation.

Mrs Melchior subsequently fell pregnant and gave birth to a healthy baby boy.

Mr and Mrs Melchior claimed compensation from Dr Cattanach (amongst others) for the cost of raising and maintaining the child to age 18; for loss and damage caused by pregnancy and birth (Mrs Melchior), and for loss of consortium (Mr. Melchior).

Held

The majority (McHugh, Gummow, Kirby and Callinan JJ; (Gleeson CJ, Hayne and Heydon JJ dissenting))) held that the liability of the doctor should be based on ordinary negligence principles.

As the doctor had conceded negligence, and as the costs of raising the child were directly causally related to that negligence, the claim should be allowed.

The majority rejected the argument that reasons of policy/morality should prevent the claim. This included the argument that the birth of a child was of such intrinsic value that it could never be a 'legal harm'. The Court pointed out that the 'wrong' or 'legal harm' for which damages are awarded is not the birth of the child, but the negligence of the doctor.