

AUSTRALIA / JUDGMENT

Clark v Blackstock [2023] NSWDC 60

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District Court New South Wales

Medium Neutral Citation: Clark v Blackstock [2023] NSWDC 60 Hearing dates: 21 February, 1, 8 & 16 March 2023 Date of orders: 17 March 2023 Decision date: 17 March 2023 Jurisdiction: Civil Before: Judge Levy SC Decision: 1. Verdict and judgment for the plaintiff in the amount of \$304,000;

2. The defendant is to pay the plaintiff's costs on the ordinary basis unless otherwise ordered;
3. The exhibits may be returned;
4. Pursuant to s 98 and s 99 of the Civil Procedure Act 2005 (NSW), at the time the plaintiff's solicitor renders his bill of costs to the plaintiff he is required to file a certificate with the Court file evidencing the fact that he has not charged the plaintiff any professional fees for the wasted listing of the matter on 21 February 2023;
5. Liberty to apply on 7 days' notice if further or other orders are required. Catchwords: TORTS – professional negligence – medical – cosmetic surgery – damages claim against medical practitioner concerning adverse results from breast augmentation surgery; DAMAGES – assessment of heads of damage claimed by plaintiff Legislation Cited: Civil Liability Act 2002 (NSW), s 16 Civil Procedure Act 2005 (NSW), s 98, s 99 Category: Principal judgment Parties: Rachael Clark (Plaintiff) Leslie Blackstock (Defendant) Representation: Counsel: Mr A Campbell (Plaintiff) No appearance by the defendant

Solicitors: Gerard Malouf & Partners (Plaintiff) No appearance by the defendant File Number(s): 2021/87339 Publication restriction: None

Judgment

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Nature of case

1. The plaintiff, Ms Rachael Clark, claims damages for professional negligence against Mr Leslie Blackstock, a former medical practitioner, in respect of breast implant removal and replacement surgery he performed on her whilst still a registered medical practitioner. He performed that operation on Thursday 13 October 2016, at his consulting rooms at a house in Woodriff Street, Penrith, NSW.

Procedural context and issues

1. In the absence of any appearance by the defendant, or any other litigation activity on his part, a default judgment has been entered in favour of the plaintiff, leaving the remaining question of damages to be assessed. The proceedings were listed for hearing on 21 February 2023. The matter could not proceed on that day due to procedural failures on the part of the plaintiff's solicitor which necessitated an adjournment. Following a further interlocutory listing on 1 March 2023, those procedural failures were remediated with a further assessment hearing fixed for 8 March 2023. That hearing could not proceed to completion on that day due to the non-attendance of the plaintiff. It was finalised at a further hearing by means of an AVL connection on 16 March 2023. The proceedings are governed by the Civil Liability Act 2002 (NSW) ("CL Act").

Evidence overview

1. The plaintiff tendered a Court Book which was marked Exhibit "A". It contained relevant reports from two medico-legal assessors, relevant photographs and details of out-of-pocket expenses. The Court Book included statements from the plaintiff dated 28 August 2020 and 20 February 2023. Those statements were supplemented with oral evidence from the plaintiff on 16 March 2023. I found the plaintiff's evidence to be entirely credible and compelling.

Facts

1. The factual circumstances relevant to the assessment of the plaintiff's damages are as follows.

Plaintiff's background circumstances

1. The plaintiff is presently aged 51 years. She is a self-employed hairdresser. She is divorced and has care of her children.
2. In about 2001, she underwent bilateral breast augmentation surgery in Victoria. The result was satisfactory to her. The effect was to increase her breast size to a B-cup. She was advised that the implants should be replaced after about 20 years.
3. In 2016, after some deliberation and research she decided she wanted to increase her breast size from a B-cup to a larger-sized C-cup a little earlier than the suggested replacement time. For that purpose, she consulted Dr Blackstock at his Enhance Clinic in Woodriff Street, Penrith, NSW. He agreed to perform the surgery that she was seeking.

Operation by Dr Blackstock on 13 October 2016

1. On 13 October 2016, Dr Blackstock operated on the plaintiff at the abovementioned premises. He removed the plaintiff's existing breast implants and augmented the sizes of her breasts by inserting larger sized silicone implants. The plaintiff was given twilight anaesthesia for this procedure. This meant she was aware of Dr Blackstock "ripping and pushing" and tugging during the surgery on her breasts. During the procedure he brought her out of anaesthesia and sat her up and showed her the holes in her chest, to ask her about her preferred implant size. She described those events as a horrible experience. It took a total of 45 minutes.

Post-operative problems

1. The plaintiff experienced painful post-operative complications. In addition to pain, she had significant additional scarring underneath both breasts. Her left breast felt very lumpy and it appeared to her to be disproportionate in size. She also considered that her left breast appeared to be malpositioned and malaligned on her chest. She was upset because post-operatively, her breasts were too low and drooping, and pointed to the side and outwards and away from her body. She had a rippling sensation in the scars. She was distraught by the whole experience.

Medical treatment

1. The plaintiff sought out further medical opinions which confirmed her own impressions that the surgery had been performed by Dr Blackstock in a sub-standard or negligent manner.

Review by Dr Howard de Torres, consultant plastic surgeon

1. On 2 January 2021, at the request of her solicitor, the plaintiff was examined by Dr Howard de Torres, a consultant plastic and reconstructive surgeon. He was of the opinion Dr Blackstock failed to provide the plaintiff with a reasonable standard of care when he carried out the surgery.
2. Dr de Torres considered the plaintiff's replacement implants had been inserted in positions that were too low and too lateral. He described this malpositioning as giving the plaintiff a very unusual and abnormal physiognomy. He stated that the plaintiff's implants needed to be removed and that the plaintiff should then wait 3 months before undergoing appropriate re-implantation into the correct anatomical positions. He estimated the cost of that treatment to be of the order of \$28,000 in total.

Review by Dr Robert Kaplan, consultant psychiatrist

1. On 4 June 2021, at the request of her solicitor, the plaintiff was assessed by Dr Robert Kaplan, a forensic psychiatrist.

2. Dr Kaplan noted that as a result of the surgery, the plaintiff had become socially withdrawn, had lost confidence and was embarrassed due to her altered appearance. He noted she was depressed, mirror and relationship avoidant, she had become limited in her choice of clothing, and had suffered a chronic depression and an adjustment disorder as a result of Dr Blackstock's surgery.
3. Dr Kaplan noted that there had been a change in the plaintiff's lifestyle and personality as a result of the surgery. Dr Kaplan was of the opinion that the plaintiff needed to continue to take anti-depressant medication and could experience psychological decompensation and an exacerbation of her depression if the abnormal appearance of her breasts become worse. He recommended the plaintiff have further psychological and psychiatric treatment which will involve her in future expense.

Disabilities that remain

1. The plaintiff's physical problems caused by Dr Blackstock's surgery include embarrassing scarring, and intermittent sharp pain in her left side. The scarring from Dr Blackstock's procedure was much longer and deeper than the relatively small scars that remained from the 2001 operation. She has painful lumps on the left side of her left breast. Lifting and carrying weights exacerbates the plaintiff's experience of pain in her left side.
2. Psychologically, the plaintiff is irritable, depressed, withdrawn and anxious. She still has recurring discomforting flashback issues of the chest lacerations she was shown during the procedure. At times she is tearful and short-tempered with her children. She has become relationship avoidant. She gets upset when she sees her deformed breasts. She is often tearful and her moods can fluctuate for days. She takes psychotropic medication to manage those problems. She has become reticent to expose the appearance of her breasts to a new partner. She is mirror avoidant. She has much reduced self-confidence as a result of the procedure. She has become forgetful. She suffers from sleep disturbance. She is now limited in her clothing choices. She suffers an adjustment disorder as a result of Dr Blackstock's surgery.

Assessment of damages

1. My assessment of the plaintiff's damages now follows.

Non-economic loss

1. The plaintiff has been left with disfiguring scars to her chest which are additional to the scars from her 2021 operation. The appearance of her breasts has become unsatisfactory to her. In addition, she now faces at least two further bouts of traumatic surgery to seek correction of the deformities created by Dr Blackstock's surgery. She has impaired self-esteem and she has suffered a decline in her mental health. She has body image issues which affect her choices of clothing. She has been left with physical restrictions that interfere with some of her work tasks. Her pain, suffering and loss of amenity of life has been significant. I assess her damages for non-economic loss pursuant to s 16 of the CL Act

at 37 per cent of a most extreme case. This equates to the sum of \$261,000.

Past economic loss

1. The plaintiff has incurred a past loss of earnings in the amount of \$5000.

Future economic loss

1. The plaintiff will have to take about 3 weeks off work for remedial surgery. She presently earns \$1000 per week net. I assess her future economic loss at \$3000.

Future out-of-pocket expenses

1. The plaintiff's claim for future treatment expenses is modest, including the proposed future surgeries, consequential medical, psychological and pharmaceutical treatment, this is assessed in the buffer amount of \$30,000.

Past out-of-pocket expenses

1. The plaintiff estimates her past out-of-pocket expenses at \$5000. I assess those expenses in the sum of \$5000.

Summary of damages assessment

1. My assessment of the plaintiff's damages is summarised as follows:
 - (a) Non-economic loss \$261,000
 - (b) Past economic loss \$5,000
 - (c) Future economic loss \$3,000
 - (d) Future out-of-pocket expenses \$30,000
 - (e) Past out-of-pocket expenses \$5,000 Total \$304,000

Disposition and costs

1. The plaintiff is entitled to a judgment for a damages award of \$304,000 and she should have a verdict and judgment in her favour for that amount. As the plaintiff has succeeded in obtaining a judgment in her favour, she should also have an order that the defendant should pay her costs of the proceedings on the ordinary basis.

Orders

1. I make the following orders:
 1. Verdict and judgment for the plaintiff in the amount of \$304,000;
 2. The defendant is to pay the plaintiff's costs on the ordinary basis unless otherwise ordered
 3. The exhibits may be returned;

4. Pursuant to s 98 and s 99 of the Civil Procedure Act 2005 (NSW), at the time the plaintiff's solicitor renders his bill of costs to the plaintiff he is required to file a certificate with the Court file evidencing the fact that he has not charged the plaintiff any professional fees for the wasted listing of the matter on 21 February 2023;
5. Liberty to apply on 7 days' notice if further or other orders are required.

Amendments 20 March 2023 - Typographical errors on: Coversheet: File number corrected; Paragraph 15: "if her abnormal" changed to "if the abnormal" Paragraph 16: "remined" to "remained" Paragraph 19: "cars" to "scars" Paragraph 22: "treatment, is assessed" to "treatment, this is assessed" DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 20 March 2023

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Prepared on 30 October 2026 · Esheria