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[X v UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST \(2019\)](#)

Total Damages: £1,534,490 (£1,551,364.12 RPI)

Trial/settlement date: 13/11/2019

Judge: HH J Alison Hampton
Registry

Age at trial: 45

PSLA: £80,000 (£80,879.73 RPI)

Type of Award: Court Award

Court: High Court of Justice (QBD), Leicester District

Age at injury: 36

Sex: Female

The claimant, a 45-year-old woman, received £1,534,490 total damages for the delay in diagnosis of cauda equina syndrome in August 2010. She suffered bowel and bladder dysfunction, used a wheelchair to mobilise outdoors, had severe to moderate depression and would require life-long care.

Clinical Negligence: The claimant (C), female, aged 36 at the date of the accident and 45 at the date of the trial suffered bladder and bowel dysfunction as a result of the delay in diagnosis of cauda equina syndrome in August 2010 by a hospital of the defendant trust (D).

On 27 July 2010 C, who had a history of back pain, was admitted to D after a referral by her GP, following a sudden increase in back pain and two earlier attendances on her GP in April 2010. On 28 July 2010 C underwent an MRI scan which was interpreted as showing a large L4/L5 posterior disc herniation with inferior migration causing compression of right L5 nerve route. The radiology report stated that there was no cauda equina compression and C was discharged.

C returned to her GP for review on 5 August and again on 11 August. The GP advised her to return to A&E due to increasing neurological symptoms including a strange feeling in her right buttock. She also had an episode of faecal incontinence. C was admitted to hospital late on 11 August after being seen by an A&E senior house officer who requested orthopaedic assessment. On 12 August at 04:00 there was a further SHO review. A rectal examination showed reduced anal tone. There was loss of sensation over the right S3/4 dermatome. A neurological examination showed right hip, leg, knee and ankle weakness. There was reduced sensation at the L3 sensory level. A further MRI scan was undertaken at 10.36 and reported no cauda equina compression again. C was seen on the ward round by an acute medical consultant, and an urgent senior orthopaedic review was requested. That review was undertaken by an orthopaedic surgical registrar, who reported back to the consultant orthopaedic surgeon. On 13 August C was seen again on the ward round by the acute medical consultant and reduced right foot movement was noted as a new symptom. Struggling to empty bladder was also recorded. The consultant orthopaedic surgeon was requested to assess the patient himself. C remained in hospital and underwent an L5 (right) nerve root block on 16 August. On 18 August C was discharged after being seen by the orthopaedic consultant.

On 30 August C suffered a fall at home and was taken to hospital by ambulance in the early hours of 31 August. Another MRI was undertaken. C remained in hospital. On 6 September C was reviewed by a spinal surgeon. He recorded acute right leg radicular pain, right perineal numbness, bilateral sciatica, right leg sensory loss and a decrease in perianal sensation on the right side. After examining C he arranged a L4/5 discectomy that day. C was discharged one week later.

C sustained injury and brought an action against D alleging that it was negligent in failing to diagnose cauda equina syndrome when she attended hospital in July and August 2010. Her case was that she should have been offered emergency decompression surgery on 12 or 13 August 2010 based on the MRI scans and her presenting "red flag" symptoms. Liability denied. D's position was that the MRI scans were reported correctly, excluded cauda equina syndrome and her management had been appropriate. D denied causation, arguing that C did not have cauda equina syndrome and that her condition was caused by functional neurological symptom disorder.

C had bladder incontinence and performed intermittent self-catheterisation. She suffered from bowel dysfunction and required an anal irrigation system to empty her bowel each day. She was left with sexual dysfunction, severely restricted mobility, with weakness and pain in the right leg and foot with muscle spasms in her thigh, calf and foot. She used crutches to mobilise in her flat and a wheelchair for outside the home. She had upper limb pain due to the reliance on crutches. She had permanent severe back pain and severe to moderate depression. The evidence of the

parties' psychiatrists was that C should improve significantly with treatment, including CBT, but that she would retain a vulnerability to future episodes of depression. She had headaches as a result of her medication. A spinal cord stimulator was fitted in 2016 to help reduce her pain. C had little prospect of returning to the labour market and required life-long professional care.

Court Award: £1,534,490 total damages

Breakdown of General Damages: Pain, suffering and loss of amenity: £80,000; Interest on general damages: £6,720; Future hygiene item costs: £21,429; Future case management costs: £3,470; Future treatment costs: £260,432; Future holiday costs: £106,170; Future accommodation costs: £25,000; Future care costs: £1,027,395.

Breakdown of Special Damages: Past care costs: £2,629; Past hygiene item costs: £658; Past travel costs: £500; Interest on special damages: £87.

Background to damages: At trial, D argued discrepancies in the medical records undermined C's case and were inconsistent with her having cauda equina syndrome. The judge commented that medical notes were often short and would only record one item or those matters which seem of most important to that practitioner at that time. In an acute setting doctors were often interested in new symptoms. In addition, a patient could be embarrassed or only mention symptoms that were new or important to that patient at a particular time.

The judge held that there was a breach of duty by the orthopaedic registrar in failing to (i) undertake a thorough examination of C on 13 August 2010; (ii) correctly note the previously reported bladder and bowel symptoms and reduced anal tone and numbness; (iii) accurately report C's presentation and history to the consultant orthopaedic surgeon. If it was not for those breaches of duty, C would have undergone decompression surgery on 13 August 2010.

As to causation, there was a dispute between the radiologists as to whether the MRI scan showed unilateral compression of the nerve roots of the cauda equina (i.e. right S2 to S5). The judge accepted that unilateral involvement of the cauda equina nerve roots was capable of causing cauda equina syndrome. She also accepted the evidence of C's neurosurgeon that a prolapsed disc could give rise to an inflammatory response, which could cause symptoms such as those reported by C, but the changes would not necessarily be seen on an MRI scan. In particular, the judge accepted that direct compression of the cauda equina nerve roots (S2 to S4) by a prolapsed disc was not always seen on an MRI scan for the patient to have cauda equina syndrome. The judge held that on the balance of probabilities C was suffering with cauda equina syndrome in August 2010 and on the balance of probabilities C's bladder and bowel problems had been caused by cauda equina syndrome.

Due to the long-standing back condition, the judge was not satisfied that C had proven the delay in surgery had caused her disabilities beyond the bowel, bladder and sexual dysfunction. She accepted care in respect of her bladder and bowel incontinence were qualitatively different from the care she required in respect of her orthopaedic condition. She awarded C the cost of a live-in carer from the age of 70 and disregarded the fact that she would have required such care on account of her orthopaedic conditions alone. Damages had largely been agreed during the trial, on the basis C only recovered for bladder, bowel and sexual dysfunction.

Total injury duration: permanent

Jonathan AD Jones QC and David Tyack instructed by Moosa-Duke Solicitors (Leicester) for the claimant. Michael de Navarro QC and Nina Unthank instructed by Browne Jacobson (Nottingham) for the defendant

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This Quantum Report was provided courtesy of Mehmooda Duke MBE DL and Daniel O'Keeffe of [Moosa-Duke Solicitors](#), solicitors for the claimant.

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