Case Study

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**Case law report essay**

**Negligence**:– In-hospital patient is burned During the treatment of diathermic.

Liability is misconduct, sometimes require some degree of intentional conduct, put differently, or it may be some degree of fault and make someone responsible for some act. Moreover, negligence is a failure to take care of anything which can affect anybody or anything where the plaintiff (the person who experienced injury or damage) has a duty of care to the defendant (the person upon whom case issued). Negligence creates due to carelessness in unforeseen circumstances, and negligent is responsible to take reasonable step to prevent damages and injuries. In some cases, the person is not responsible for the negligence, but he is held liable for the negligence and liability is imposed on that person. Strict liability is imposed on a person who is responsible for an accident.

Facts

 The patient was admitted in the hospital under the board contract, attendance, and nursing. To treatment, the defendant operated and maintained a piece of equipment for seeking profit in hospital. The nurse who was supervising the hospital floor was instructed by the physician to give the patient diathermic treatment to relieve the pain of the patient and the treatment was given. The treatment was handed over to the nurse who was the supervisor of such kind of treatments and she is the permanent employee of the hospital staff. To do the actual treatment plaintiffs physician has no other option to treat the patient. There was no information given that the nurse lacks the competence in handling this equipment or equipment has any defect. During the treatment, the patient was severely burned. The plaintiff sued that the bur was caused due to the negligence of a nurse in handling the equipment and the plaintiffs alleging for damages. The judgment was given by the trial judges for plaintiffs, for Ontario ([1937 CanLII 16 (ON CA)](https://www.canlii.org/en/on/onca/doc/1937/1937canlii16/1937canlii16.html), [1937] O.R. 512) appeal was confirmed by the Court.

**Issue**

In Negligence act, defendants are liable for damages, which were caused due to the negligence of nurse during treatment. The nurse was acting as the servant and agent of the hospital and the scope of her employment was ordinary. No evidence takes her out from relationship in the time, she was administrating the specific treatment to the plaintiff.

**Decision:**

The trial judge found the specific act of negligence against the nurse because due to convenience she put the plugin socket which was wrong one among the two sockets and that socket is having a very powerful current and the patient was burned due to that powerful electric shock. The plaintiff held the hospital responsible for the damages. The hospital appeals to the court, it is impossible to find evidence against the nurse in the issue of negligence. The Counsel of the hospital analyze the evidence and after very careful analysis they have found a reason to escape based on two reasons. The trial judge found the specific act of negligence was not reasonable upon the evidence. In the room, there were two sockets and the nurse used to apply 750milliampheres. The nurse states that she was used only 750 milliamperes but unfortunately the needle show 750 milliamperes and 3000 milliamperes at the same time. The figure 3000 was present at the outer circle and 750 on the inner circle and if the nurse put the plug-in socket with high electric power the needle will go near to 4000 milliamperes. The nurse undoubtedly put the plug on the wrong socket and that was the reason for injury for the patient. The hospital nurse who was the floor supervisor notices during the treatment that the small part of patient was looking like a dead flash, in the earlier stage it was white dead flash and after some time it turns into dark red. There were no suggestions that the apparatus using in the hospital was defective or the nurse working in the hospital is was not competent enough to use the apparatus properly.

Lord Justice Kennedy stated the useful rules which may be considered in some conditions , It is safer to act at the time of negligence to find the character of nurse at the time of employment and focus the attention on the fact point, the nurse was negligent during the time she was involved in the particular work she was caring as a servant or agent of the hospital and she was being passed through the control and direction of the hospital and patient himself. The court has not received any evidence that takes her out from the negligence of the nurse during the time she was doing the specific treatment of the patient. The hospital is held liable to the damages and according to law, the hospital could not run away from the law consequences due to the nurse act of negligence. The nurse should have special knowledge and training in the treatment of such cases. There are many cases in the hospital, maybe a nurse engages in skillful and professional nature of cases and profession requires to have proper knowledge and training for those special cases. One case may be different from another case. According to Crocket, the defendant had not provided sufficient evidence to warrant the judgment of the trial judge that the injuries of plaintiff were caused due to the negligence of administrating nurse while she was doing the diathermic treatment during her job as a servant in the hospital of the defendant. With cost, the appeal must be dismissed.

**References**

Hudson JJ, D. (2019). Sisters of St. Joseph of the Diocese of London v. Fleming, [1938] S.C.R. 172. Retrieved 26 July 2019, from https://www.canlii.org/en/ca/scc/doc/1938/1938canlii3/1938canlii3.html?searchUrlHash=AAAAAQAPbmVnbGlnZW5jZSBjYXNlAAAAAAE&resultIndex=10#\_ftn35