

Zulhasnimar bt Hasan Basri & Anor v Dr Kuppu Velumani P & Ors
[2017] 5 MLJ 438

1. **Zulhasnimar** has been described as a landmark case in regard to the discussion in it of the application of the Bolam test in medical negligence.
2. However, regrettably, it should be notable also for the obstetric expert evidence tendered in support of the defence to the claim which involved massive brain damage suffered by a baby by reason of a hypoxic-ischaemic insult at birth.
3. A fetus is dependent on the mother's blood circulation for receiving oxygen.
4. The attending defendant obstetrician's stated intention was to perform a Caesarean section if the mother (who was at 36 weeks of gestation) had gone into labour.
5. It was therefore crucial for a successful defence to establish that the mother of the baby was not in labour at any time before she collapsed, undisputably because of massive bleeding.
6. Following the collapse, it was then that an emergency Caesarean section was performed, the baby being born in a very ill state.
7. It was the plaintiffs' case that the mother was in labour for some time before her collapse and that a Caesarean section should have been performed without delay, certainly before the collapse could take place. In that way, the baby would not have suffered loss of oxygen *in utero* by reason of the massive bleeding suffered by the mother upon collapse while awaiting the delayed Caesarean section.
8. The defence obstetric expert Dr Raman Subramaniam, while under examination-in-chief by learned counsel Mr Darryl Goon, let slip the truth with these notable words of admission regarding the mother: -

"In this patient who was in premature labour..."

9. In his expert report given before trial, Dr Raman wrote, "*the pain was thought to be due to labour.*" He also wrote, "*she was given Bricanyl in an attempt to stop labour.*"

10. Mr Goon for the defendant obstetricians asked the plaintiffs' expert Dr Ong Hean Choon during cross-examination: -

"Do you agree that she was in early stage of labour?"

11. Dr Ong happily and readily replied, "Yes."

12. The question and answer were truly significant!

13. Following such "own goals" by the defendant obstetricians and Dr Raman, they made a 180-degree turn: the mother was not in labour, they claimed!

14. Dr Raman moved from his earlier position and insisted under cross-examination that she was not in labour.

15. And the defendants succeeded in getting the claim dismissed.

16. None of the nine Judges who had heard this case as it wound its way up into the Federal Court had addressed this point regarding the "own goals."

17. The regrettable final result: a little girl who was born following her mother's collapse (a "horrific incident", according to Dr Raman) had suffered severe brain damage; is maimed for life; and is without compensation.

18. About the issue of a court not addressing a point which has been raised, especially by an eventually unsuccessful party, it would be instructive to see the judgment of the Court in the landmark case **Carlill v Carbolic Smoke Ball Company [1893] 1 Q.B. 256** in which the Court addressed each and every one of the amazing number of points of law covering many important parts of the law of contract which were raised, ably but unsuccessfully, for the defendant.

P S Ranjan & Co
20 October 2021

Note:

P S Ranjan & Co had acted for the mother and the daughter and have retained various papers relating to this case, including the record of appeal.