

## Some Medicolegal Considerations

Official Transcripts (1980 – 1989)  
Rialas versus Mitchell

(The plaintiff is an infant 6 years old  
represented by his father and next friend  
Rialas)

(The defendant is Mitchell, the van driver  
hitting the infant)

## Some Similarity to Ours

O'Connor, 1984

This is an appeal by the defendant awarding to the plaintiff damages for personal injuries (£350,965).

In 1977, the infant was struck by a van. Liability for the accident was admitted.

The infant sustained severe brain damage resulting in spastic quadriplegia.

The plaintiff father was self-employed and his mother quitted her job to look after the boy.

The infant stayed in hospital for a year and has lived at home ever since. The parents are determined to look after him at home.

The infant shared a room with the sister. The house was not suitable to looking after a quadriplegic. The father bought another house.

### **The defendant party advanced some propositions :**

- 1) The plaintiff is entitled to the cost of what is reasonably necessary to alleviate his injury and diminish his disability, but
- 2) Not entitled for the best possible facilities, but only to what is reasonably necessary.

O'Connor accepted these two propositions.

- 3) The court should consider the cost of alternative facilities for caring for him (put in NHS institution instead of private home).
- 4) If the plaintiff can be cared for properly in the less expensive alternative (NHS), he should recover the cost of the less expensive.

Propositions 3, 4 are not accepted.

## The deliberation by O'Connor

The starting point is a healthy uninjured child living at home; he is in hospital for a year and then returns home and is cared for by his family for four and a half years.

That he must move to an institution because it will cost less money for him to live there than it will for him to go on living at home. In my judgment, that is not a true alternative in any sense of the word.

Take this case, a fund of £100,000 is created for the provision of a night sitter.

£90,000 of general damage and loss of future earnings.

etc.....

## Other troublesome features:

Whether the parents will in fact lay out anything like £7,000 a year to provide a service (night sitter) which they have been able to do for five years without paying anybody anything!

What if the plaintiff afterwards avoided those expenses by taking advantage of facilities available in the NHS?