



A Recalibration Of Damages In Malaysian Medical Negligence Claims

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The Court of Appeal's recent decision in *Bukit Tinggi Hospital Sdn Bhd & Anor v Navin Sharma A/L Karam Chand & Anor* [2025] MLJU 3236 marks a notable shift in the Malaysian judiciary's approach to the assessment of damages in medical negligence cases. At a time when both the volume of claims and the amount of awards are rising, the judgment signals a more restrained, evidence-driven methodology particularly in relation to dependency claims, awards for pain and suffering and loss of amenities (PSLA) and most significantly, aggravated damages.

A Case Of Clinical Oversight

The facts are stark. The deceased, Suman Rampal, arrived at Bukit Tinggi Medical Centre with severe abdominal pain and a well-documented history of immunosuppression. Despite these red flags, she was assessed and advised to seek treatment later in the day at her tertiary care centre. Within hours, she deteriorated rapidly. A ruptured cyst led to widespread sepsis and kidney failure, though intensive interventions followed it came too late. She died the next day.

Her family pursued claims under Sections 7 and 8 of the Civil Law Act 1956 and the High Court awarded over RM1 million, an amount that included RM700,000 in aggravated damages.

The Court Of Appeal Pulls The Reins

On appeal, the Court of Appeal trimmed the award substantially and took the opportunity to restate and, in some respects, recalibrate the governing principles.

Pain And Suffering

The trial judge's RM100,000 award for PSLA was halved. The appellate court accepted that the deceased experienced acute pain and underwent invasive procedures but emphasised that compensation must be proportionate to the actual duration of suffering, which in this case was roughly 24 hours. The court also referenced its own recent benchmarks (*Dr. Chandran Gnanappah v. Gan See Joe (Suing As The Administrator Of The Estate Of Gan Hong Wee, Deceased) And Anor* [2025] CLJU 1144), signalling an attempt to bring coherence to an area traditionally marked by variability.

Dependency Claims: Evidence Over Inference

The High Court's RM 176,280 loss of support award was set aside entirely: a striking outcome and one that underscores the court's insistence on evidential rigour. The husband's substantially higher income approximately RM 20,000 per month compared with the deceased's RM 3,000 made it implausible that the family depended on her earnings for future education or maintenance needs. Dependency, the court stressed, is akin to a claim for special damages; claims must be supported by "*clear, convincing and compelling*" proof.

This represents a clear warning shot. Malaysian courts, the judges suggested, must be "stoic" in their approach and resist the gravitational pull of sympathy in tragic medical cases.

Aggravated Damages: Back To First Principles

The real pivot point in the judgment is the treatment of aggravated damages. The RM700,000 award was swept aside after a meticulous review of the governing principles from *Rookes v Barnard* [1964] AC 1129 onwards. Four points stand out:

1. Pleadings matter

Aggravated damages must be specifically pleaded and properly particularised, vague references to distress or misconduct will not suffice.

2. Timing is crucial

The aggravating conduct must occur contemporaneously with the tort. Pre-litigation frustrations or litigation behaviour, are legally irrelevant.

3. Estate claims are limited

An estate may claim aggravated damages only for conduct occurring while the deceased was alive and conscious of it. Post-mortem indignities or administrative mishandling fall outside the scope.

4. Litigation misconduct belongs elsewhere

Misbehaviour during proceedings should be dealt with under procedural rules, not through inflated damages.

In an unusually candid observation, the court noted that aggravated damages have "almost become the norm" in Malaysian medical negligence suits, an indication of judicial unease with a trend that risks transforming compensatory claims into punitive ones.

Commentary

This Court of Appeal ruling reinstates the reasoning in *Inas Faiqah Bt Mohd Helmi (An Infant Suing Through Her Father And Next Friend, Mohd Helmi Bin Abdul Aziz) v Kerajaan Malaysia & Ors* [2016] 2 MLJ 1 and aligns, albeit cautiously, with *Kralj v McGrath* [1986] 1 All ER 54, where the English High Court discouraged aggravated damages in medical negligence cases on the basis that emotional distress and suffering should be reflected in a higher award of compensatory damages.

For hospitals, insurers and litigators, the message is twofold. First, courts are shifting toward tighter scrutiny of evidence, especially for dependency claims. Second, aggravated damages once viewed as a supplement to compensate emotive or egregious clinical failings will no longer be awarded simply because a case is tragic or the medical care poor.

The Court of Appeal's call for the Federal Court to clarify the availability of aggravated damages in medical negligence suits hints at a potential re-drawing of the doctrinal map. With healthcare litigation rising and private healthcare providers wary of escalating liabilities, a definitive statement from Malaysia's apex court would provide much-needed certainty.

For now, this decision reflects an attempt to restore proportionality and discipline to an area of law where empathy for grieving families must be balanced against the foundational principle that damages exist to compensate not to punish.

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