

JUDGMENT Express

[2025] 2 MLRH

Adam Hamil
v. Dr Chiam Tee Kiang

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ADAM HAMIL v. DR CHIAM TEE KIANG

High Court Malaya, Kuala Lumpur
Roz Mawar Rozain J
[Civil Suit No: WA-23NCVC-26-03-2022]
15 November 2024

***Tort:** Negligence — Medical negligence — Medical negligence claim arising from two aesthetic procedures involving nose implant work and ear cartilage grafting performed by Defendant on Plaintiff — Whether Defendant qualified and licensed to perform these procedures on Plaintiff — Standard of care — Whether Defendant breached duty of care that he owed Plaintiff — Whether pain and trauma suffered by Plaintiff caused by Defendant’s breach of duty — Quantum of damages*

This was a medical negligence claim arising from two aesthetic procedures involving nose implant work and ear cartilage grafting performed by the Defendant on the Plaintiff. At the heart of this case lay a fundamental question: Whether the Defendant, as an aesthetic medical practitioner qualified only under Chapter 1 of the Guidelines on Aesthetic Medical Practice (‘LCP’), was qualified and licensed to perform these procedures on the Plaintiff. The main issues that required determination were: (a) What was the standard of care applicable to the Defendant as a Chapter 1 LCP aesthetic practitioner? (b) Did the Defendant breach the duty of care that he owed the Plaintiff? (c) Were the pain and trauma suffered by the Plaintiff caused by the Defendant’s breach of duty? and (d) If liability was established, the appropriate quantum of damages to be awarded.

Held (allowing the Plaintiff’s claim):

(1) The evidence revealed that the Defendant had administered anaesthetic procedures and carried out the surgery on the Plaintiff. Based on the evidence before the Court, the Defendant was only qualified under Chapter 1 of the LCP, which permitted basic aesthetic procedures such as: (i) Filler injections; (ii) Laser treatments for skin and hair removal; and (iii) Skin tightening procedures. Significantly, during cross-examination, the Defendant was unable to state which procedures he was qualified to perform under Chapter 1 of the LCP certification without referring to his certificate. This demonstrated a concerning lack of awareness of the limitations of his own qualifications. The surgical procedures carried out by the Defendant on the Plaintiff, including trimming his nose implant with ear cartilage grafting and administering injections were outside the scope of Chapter 1 of the LCP, for which the Defendant was licensed. On the balance of probabilities, there were representations on the social media of the Defendant’s clinic, Gorgeous Clinic, that it carried out



such intrusive and invasive aesthetic surgical procedures. The Defendant being a doctor in Gorgeous Clinic did not refute such representation. So, he had held himself out as having possessed expertise in nose implant procedures and had further failed to disclose the limitations of his qualifications. (paras 39-43)

(2) Following the Federal Court's decision in *Foo Fio Na v. Dr Soo Fook Mun & Anor*, which adopted the legal principle in *Rogers v. Whitaker*, the Court found that: (a) The Defendant, by presenting himself as qualified to perform nose implant procedures, owed a duty to exercise the standard of care of a cosmetic surgical specialist; (b) By performing the procedures on the Plaintiff which were beyond his qualifications and licensing, the Defendant had fundamentally breached this duty of care; and (c) This breach was not merely technical – it went to the root of patient safety and medical ethics. The Defendant's defence that the Plaintiff had requested or consented to the procedures could not stand because: (a) Medical practitioners could not perform procedures beyond their qualifications merely because a patient requested it; (b) Valid consent required full disclosure of the practitioner's qualifications and limitations; and (c) The Defendant failed to disclose that he was not qualified to perform these procedures. (paras 44-45)

(3) The evidence showed that the surgical procedures undertaken by the Defendant on the Plaintiff had not resolved his nose implant issues but instead aggravated them, as the nose implant was trimmed rather than removed. As such, the condition of the Plaintiff was not alleviated. The infection of the Plaintiff's nose had persisted from the surgical procedures performed by the Defendant for a long period after that. Based on the evidence, the Plaintiff had only recovered from that condition upon the removal of the nose implant. On the balance of probabilities, the Defendant's breach of duty/standard of care had caused the Plaintiff's pain and suffering. (paras 47-48)

(4) Based on these findings, the Court held that: (a) The Defendant acted negligently by performing medical procedures beyond his qualification and license; (b) This constituted a fundamental breach of the standard of care expected of medical practitioners; (c) The Defendant was liable for the injuries and complications suffered by the Plaintiff as a result of these unauthorised procedures. This finding of liability was based on the simple but crucial principle that medical practitioners must not perform procedures beyond their qualifications and licensing, regardless of their confidence in their ability to do so. This was fundamental to patient safety and the integrity of medical practice. (paras 50-51)

(5) For pain and suffering, the Court awarded RM150,000.00. This took into account the effects of the procedure performed by the Defendant which resulted in the Plaintiff experiencing pus discharge because the trimming of the Plaintiff's nose implant had allowed the infection to persist. The surgical procedure performed by the Defendant on the Plaintiff had not resolved the Plaintiff's condition. The fact that any reconstructive surgery would not fully revert the Plaintiff's nose shape back to its original condition was also



considered. The pain and discomfort during recovery periods as well as some psychological impact on his mental health due to the failed procedures were also taken into account. (para 58)

(6) For special damages, the Court regarded all bills, invoices and documents adduced by the Plaintiff and awarded RM68,239.55. (para 60)

(7) For loss of income, although it was feasible that the plaintiff would have needed to take time off from work as a hairstylist to attend to this matter, he had failed to prove that he had clients booked or that he had to turn down clients on those days. The Court did not award any damages on loss of income, loss of prospect of marriage or living a normal life, or loss of reputation and business confidence, as there was no evidence presented to support such claims. (paras 62-63)

(8) For future medical expenses, evidence was adduced that it would cost around RM80,000.00 to repair and reconstruct the Plaintiff's nose and to remove the scars. Although the Plaintiff sought much more (RM200,000.00), there was no evidence to justify such an amount. The Plaintiff had undergone two corrective rhinoplasty surgeries in Vietnam and Thailand which amounted to RM56,469.55. The Court decided to award RM80,000.00 for future medical expenses to the Plaintiff. As the amount of RM56,469.55 had already been awarded under Special Damages, the sum of RM23,530.45 would be awarded. This sum included any necessary laser treatments for the removal of scars. (para 64)

(9) Exemplary damages were awarded in this case for deterrence purposes – to set an example for beauty clinics that had proliferated nationwide offering beauty aesthetics surgeries. These clinics ought to be more careful not to perform procedures beyond their licensed scope. In this case, the Court awarded exemplary damages of RM100,000.00 to the Plaintiff. (para 65)

Case(s) referred to:

Abiramee Ramalingam v. Nur Isabella Abdullah & Ors [2023] MLRHU 2276 (refd)

Foo Fio Na v. Dr Soo Fook Mun & Anor [2006] 2 MLRA 410 (folld)

Hasniyati Hassan & Anor v. Pantai Holdings Sdn Bhd & Ors [2022] 5 MLRH 675 (refd)

Inas Faiqah Mohd Helmi v. Kerajaan Malaysia & Ors [2016] 1 MLRA 647 (refd)

Loo Chooi Gaik v. Dr Loh Lay Soon [2018] MLRAU 520 (refd)

Norfazlin Zamani v. Kerajaan Malaysia & Ors [2022] MLRHU 3042 (refd)

Nur Arissa Naura Noor Affrizal & Anor v. Dr Abirami Kunaseelan & Ors [2023] MLRHU 637 (refd)

Pantai Medical Centre Sdn Bhd v. Fareed Reezal Arund & Another Appeal [2022] 2 MLRA 592 (refd)

Rogers v. Whitaker [1992] 175 CLR 479 (refd)



Shanmugam Gopal v. Zinal Abidin Nazim & Anor [2003] 3 MLRH 410 (refd)
Sheela Christina Nair v. Regency Specialist Hospital Sdn Bhd & Ors [2016] MLRHU 758 (refd)
Sri Inai (Pulau Pinang) Sdn Bhd v. Yong Yit Swee & Ors [2002] 2 MLRA 196 (refd)
Yang Salbiah & Anor v. Jamil Harun [1980] 1 MLRA 716 (refd)

Counsel:

For the plaintiff: Sureshmurti Ramani (Hamsagayathri Loghanathan & Dyna Sri Samadass with him); M/s Hafarizam Wan & Aisha Mubarak

For the defendant: Christopher Foo (Harish Nair & Lim Jia Xin with him); M/s Juen, Jeat, Nic & Nair

JUDGMENT

Roz Mawar Rozain J:

[1] This is a medical negligence claim arising from two aesthetic procedures performed by the Defendant on the Plaintiff. The procedures involved nose implant work and ear cartilage grafting. At the heart of this case lies a fundamental question: whether the Defendant, as an aesthetic medical practitioner qualified only under Chapter 1 of the Guidelines on Aesthetic Medical Practice (LCP), was qualified and licensed to perform these procedures on the Plaintiff. If he was, did he breach his standard of care towards the Plaintiff? Was the Plaintiff's pain and suffering due to the Plaintiff's breach?

[2] The Plaintiff had commenced his suit for medical negligence against the Defendant and one Dr Jeffrey Lim Chung Yeow, both of whom were practising together at Gorgeous Clinic, G-6 Block A Vista Magna, Metro Prima Kepong, 52100 Kuala Lumpur. That was where the two aesthetic procedures undertaken by the Defendant on the Plaintiff took place. His suit was filed on 28 March 2022. On 27 September 2023, the Plaintiff withdrew his claim against Dr Jeffrey Lim Chung Yeow. The trial was against the Defendant alone.

[3] Prior to the trial, on 20 April 2023, this Court had ordered the Plaintiff to bring down his live videos posted on his social media account recording his visit to Gorgeous Clinic, harassing and berating the Defendant uttering sub judice comments. Then on 26 July 2023 this Court had ordered the Plaintiff to adhere and comply with the order of 20 April 2023 with immediate effect and he was fined RM10,000.00 for failing to abide by the said Court order.

Pleadings Of The Parties

[4] The Plaintiff's case rests primarily on the contention that the Defendant was negligent contending that the Defendant had failed, refused and/or was negligent to provide proper advice in accordance with medical procedural standards. The Plaintiff alleged that the Defendant failed, refused and/or was negligent to comply with the standards of the professional code of ethics of the



practice of medicine. There are ten other particulars of negligence pleaded that included the failure to provide advice on the procedure to be performed on the Plaintiff and its side effects, to ensure that the 'rhinoplasty surgery' was done properly without any negligence and complications, and maintaining a sterile environment for the surgical procedures.

[5] In his defence, the Defendant pleaded that the Plaintiff had undergone rhinoplasty procedures on 5 separate occasions in Thailand. He had suffered infections at the nose after each rhinoplasty which had resolved after intravenous antibiotic treatment and the Plaintiff had also received a semi-permanent filler injection of the nose. The Defendant during trial alluded to deny that the procedure he had carried out against the Plaintiff was rhinoplasty surgery; the Defendant suggested through the questions put to the witnesses in this Court that it was more like a corrective procedure.

[6] The Defendant's pleaded defence was that the Plaintiff was not agreeable to the Defendant's advice to remove the implant but instead had requested that the Defendant trimmed the implant to a smaller size. The Defendant claimed that he had advised the Plaintiff on the effects of not removing the implant but the Plaintiff was adamant. The Defendant denied having represented to the Plaintiff that he was a cosmetic surgeon who had carried out successful rhinoplasty procedures in the past.

[7] According to the Defendant's pleaded defence, despite being informed and advised, the Plaintiff had decided to proceed with nose implant trimming on 21 May 2021. The nose implant trimming was carried out by the Defendant. A week later, on 28 May 2021 at the follow-up consultation, the Defendant contended that he had attended to cleaning up the Plaintiff's nose when it became swollen post-surgery and cleaned up the sutures. The Defendant pleaded that at the subsequent follow-up consultations on 4 June 2021, 22 June 2021 and 30 June 2021, he had attended to the Plaintiff accordingly.

The Evidence

[8] The Plaintiff alleged that he suffered complications following a rhinoplasty procedure performed by the Defendant at Gorgeous Clinic in Kuala Lumpur on 21 May 2021. He had testified at trial. He had called two doctors as his witnesses. PW2 had given evidence that the Plaintiff was diagnosed with major depressive disorder in April 2022. However, in cross-examination PW2 admitted that the diagnosis was not concluded by him. He also could not confirm what precipitated the Plaintiff's depression.

[9] PW3 is the other doctor the Plaintiff had called as his witness, Dr Nasir. He had attended to the Plaintiff on 6 September 2021 based on complaints of pus discharge from the procedure performed by the Defendant on his nose. Dr Nasir advised immediate removal of the implant which was the same advice the Defendant had given to the Plaintiff, and again, the Plaintiff had refused to immediately abide to the advice.



[10] The Plaintiff had another bout of infection on 19 December 2021. Dr Nasir performed a surgical procedure on the Plaintiff on 23 December 2021. It was a surgery to remove the nose implant and perform wound toilet. This was to treat the infection on the Plaintiff's nose.

[11] The Plaintiff had lodged a complaint to the Malaysian Medical Centre (MMC) against the Defendant. There was a hearing but this Court is not apprised of the outcome. The Plaintiff, the Defendant and PW3 were amongst those who had testified at the MMC hearing.

[12] Evidence revealed that the Plaintiff, then a 34-year-old hairstylist, became aware of Gorgeous Clinic via social media and was interested in enhancing his nasal appearance. At his initial consultation on 20 May 2021, the Defendant advised the Plaintiff to remove the nose implant in the Plaintiff's nose. The Plaintiff has had at that point in time, 5 separate rhinoplasty procedures in Thailand. The Defendant advised him to do so after a physical inspection of the Plaintiff's nose which he concluded that there was an impending nose-tip rupture which would increase the possibility of infection.

[13] The Plaintiff had refused and insisted on an implant trimming procedure instead by using an ear cartilage graft. The procedure was conducted on 21 May 2021 by the Defendant. The Plaintiff was operated on for 4 hours by the Defendant. The sutures were removed by the Defendant a week later on 28 May 2021.

[14] Thereafter, the Plaintiff experienced swelling so he had communicated the same to Gorgeous Clinic on 31 May 2024. The communication was through the WhatsApp application. The Plaintiff was given assurance through the Gorgeous Clinic telephone number that it was normal to undergo some swelling.

[15] Despite initial reassurances from Gorgeous Clinic that they were normal post-surgical symptoms, the Plaintiff's condition did not improve. On 4 June 2021, the Plaintiff saw the Defendant who had assured him that the swelling was normal and that the nose was clean and there was no sign of infection.

[16] On 22 June 2021, at the follow-up consultation, the Defendant administered an Intralesional Shincort Injection over the semi-permanent filler of the Plaintiff's nose to reduce the size of the granulomatous soft tissue of the nose.

[17] On 30 June 2021, the Defendant attended to the Plaintiff again as there was minimal pus discharge from site of the Plaintiff's inner nose. He was prescribed and administered intravenous antibiotics.

[18] The Defendant had at the very beginning advised the Plaintiff to remove the nose implant but the Plaintiff had refused to adhere to the advice. The Defendant had performed the surgical procedures on the Plaintiff to trim the nose implant as desired by the Plaintiff when the Plaintiff was well informed of



the high possible risk of infection. Again, at the follow-up consultation on 30 June 2021, the Plaintiff was again advised by the Defendant that the Plaintiff ought to remove his nose implant. This was reflected in the Defendant's medical notes. The Plaintiff was informed that if the nose implant was not removed, the risk of infection may worsen and there would be a scar formation over the tip of his nose.

[19] The Plaintiff had received daily intravenous antibiotics from the Defendant from 1 July 2021 to 7 July 2021. On each occasion, there was no observation or notation of any pus discharge.

[20] On 13 July 2021, the Plaintiff presented himself at Gorgeous Clinic with a swelling at the nose tip. There was no pain or pus. His intention was to have another trimming of the nose implant. The Defendant explained that if the nose implant was not removed, the infection would persist. The Plaintiff instead persisted on a second nose implant trimming.

[21] Pursuant thereto, on 21 July 2021, the Defendant proceeded to perform the second nose implant trimming surgical procedure on the Plaintiff.

[22] On 28 July 2021, the Plaintiff forwarded pictures of his nose to Gorgeous Clinic's telephone number on the WhatsApp application complaining about the state of his nose. He sent more pictures on 29 July 2021 including older pictures for comparison. Gorgeous Clinic responded that they will treat it after the post-surgical swell goes down. The Plaintiff informed Gorgeous Clinic that he would return in a month but he did not. Instead, he had sought medical assistance at Beverly Wilshire Medical Centre with Dr Nasir.

[23] The Plaintiff sought corrective treatment from Dr Nasir, who found the Plaintiff's nose infected and recommended further surgical intervention. Dr Nasir advised that the Plaintiff remove the nose implant.

[24] The Plaintiff was again reluctant and took time to consider the advice which was the same as that of the Defendant. The Defendant claimed that it was due to financial constraints. After worsening symptoms, he eventually underwent corrective surgery with Dr Nasir on 23 December 2021 after experiencing another episode of infection of his nose.

[25] On 29 December 2021 at the follow-up consultation with Dr Nasir, the Plaintiff was informed that his nose appearance may not revert to the original shape before the infection.

[26] Dr Nasir testified that the treatment for the Plaintiff is a surgical reconstruction of the nose using a cartilage graft with possible several refinement surgeries as necessary. The surgical reconstruction of the nose was estimated to cost RM50,000.00. The laser treatment for the scars was approximated to be RM30,000.00 over the course of two years. This was the cost estimated at Beverly Wilshire Medical Centre.



[27] The Plaintiff had proceeded to Vietnam and Thailand to undergo corrective rhinoplasty surgeries.

Issues To Be Decided

[28] The main issues that require determination are:

- (a) Standard of Care
 - What is the standard of care applicable to the Defendant as a Chapter 1 LCP aesthetic practitioner?
- (b) Breach of duty of care
 - Did the Defendant breach the duty of care that he owed the Plaintiff?
- (c) Causation
 - Were the pain and trauma suffered by the Plaintiff caused by the Defendant's breach of duty?
- (d) Damages
 - If liability is established, the appropriate quantum of damages to be awarded

Expert Evidence

[29] The Defendant had argued that Dr Nasir was not an expert witness as he had performed the corrective surgery on the Plaintiff and thus was a witness of fact.

[30] This Court is of the considered opinion that Dr Nasir's testimony is admissible and will accord the appropriate weight to his evidence with regards to:

- Required qualifications for aesthetic procedures;
- Definition of rhinoplasty surgery;
- Who is qualified to perform aesthetic surgeries;
- Chapter 1 LCP practitioners are not supposed to perform aesthetic surgeries.

[31] Dr Nasir's qualifications and experience lend him due weight given that he started his medical practice as a plastic surgeon in 1999. To the extent of the definition of rhinoplasty surgery and the required licence to perform aesthetic procedures, this Court accepts his evidence which was tested through the cross-examination by the Defendant. This Court is mindful that he was testifying for the Plaintiff. (See *Hasniyati Hassan & Anor v. Pantai Holdings Sdn Bhd & Ors* [2022] 5 MLRH 675.)



This Court's Assessment

[32] When assessing the standard of care owed by the Defendant to the Plaintiff, the Defendant's qualification and licence take precedence. The first question that must be determined is whether the Defendant had the necessary qualifications and licence to carry out the procedure performed on the Plaintiff. This Court heard at trial, that in the field of aesthetic medical practice, there are levels to the scopes of practice a doctor is allowed to perform/administer on patients.

[33] The Defendant adduced evidence that he possesses a licence under Chapter 1 of the LCP. He was qualified and authorised to carry out the following scope of practice:

- (1) Botulinum toxin injection;
- (2) Filler injection – excluding silicone and fat;
- (3) Lasers for treating skin pigmentation;
- (4) Lasers for skin rejuvenation (including fractional ablative);
- (5) Lasers for Hair Removal (e.g. long pulsed Nd: YAG, Diode);
- (6) Skin tightening procedures – radiofrequency, ultrasound, infrared up to upper dermis.

[34] Dr Nasir whom the Plaintiff called as his expert witness had actually treated the Plaintiff. Although this Court will consider his evidence, this Court is mindful that he is not entirely an independent witness as he was involved in assessing and treating the Plaintiff. Dr Nasir testified that anything that requires a breach of the skin level becomes surgery that is categorised as an invasive procedure which can only be done under the licence of Chapter 2 or Chapter 3 of the LCP. This Court accepts that evidence.

[35] Neither party elaborated what Chapter 2 or Chapter 3 of the LCP entails as the Plaintiff throughout the trial was more focused on proving to this Court that the Defendant was medically negligent as he purportedly had breached his duty in trimming the Plaintiff's existing nose implant. This was premised on the fact that the Defendant held a Chapter 1 of the LCP.

[36] This Court referred to the LCP that provided the list of procedures allowed to be performed by doctors who were granted licences under Chapter 2 and Chapter 3 of the LCP. The scope of work under the two chapters must be performed by a medical or surgical specialist for aesthetic medical practice. The following are categorised as invasive procedures that include though are not limited to:



- Lasers for treating vascular lesions;
- Chemical peels (deep);
- Radiofrequency (external application);
- Ultrasound device (external application).

[37] The evidence shows that the Plaintiff has had five rhinoplasty procedures prior to the first consultation with the Defendant. His desire was to only trim the previous rhinoplasty done by another doctor in Thailand when he came to consult with the Defendant. After inspection of the Plaintiff's nose, the Defendant had advised him against it. The Plaintiff's nose was already infected with pus. The Defendant advised him to remove the implant totally. The Defendant's basis was that there was an impending skin rupture on the Plaintiff's nose tip due to the extreme thinness of the Plaintiff's skin.

[38] The Defendant had explained to the Plaintiff the implant trimming procedure which required using an ear cartilage graft to protect nose tip skin. The Plaintiff agreed and the surgery was carried out on 21 May 2021.

[39] Evidence revealed that the Defendant had administered anaesthetic procedures and carried out the surgery on the Plaintiff. Based on the evidence before this Court, the Defendant was only qualified under Chapter 1 of the LCP, which permits basic aesthetic procedures such as:

- Filler injections;
- Laser treatments for skin and hair removal;
- Skin tightening procedures.

[40] Significantly, during cross-examination, the Defendant was unable to state which procedures he was qualified to perform under Chapter 1 of the LCP certification without referring to his certificate. This demonstrated a concerning lack of awareness of the limitations of his own qualifications.

[41] This Court makes a finding of fact based on the evidence that the surgical procedures carried out by the Defendant on the Plaintiff to trim his nose implant with ear cartilage grafting on the Plaintiff were not within the scope of Chapter 1 of the LCP for which the Defendant was licensed for.

[42] In fact, the injections that he had administered to the Plaintiff were outside of the scope that he was licenced for.

[43] On the balance of probabilities, there were representations on Gorgeous Clinic's social media that it carried out such intrusive and invasive aesthetic surgical procedures. The Defendant being a doctor in Gorgeous Clinic did not refute such representation. So, this Court finds that he had held himself out



as having possessed expertise in nose implant procedures. The Defendant had further failed to disclose the limitations of the procedures that he was licensed for.

Standard Of Care

[44] Following the Federal Court's decision in *Foo Fio Na v. Dr Soo Fook Mun & Anor* [2006] 2 MLRA 410, which adopted the legal principle in *Rogers v. Whitaker* [1992] 175 CLR 479, this Court finds that:

- (a) The Defendant, by presenting himself as qualified to perform nose implant procedures, owed a duty to exercise the standard of care of a cosmetic surgical specialist;
- (b) By performing the procedures on the Plaintiff which were beyond his qualification and licensing, the Defendant has fundamentally breached this duty of care;
- (c) This breach is not merely technical – it goes to the root of patient safety and medical ethics.

[45] The Defendant's defence that the Plaintiff had requested or consented to the procedures cannot stand because:

- (a) A medical practitioner cannot perform procedures beyond their qualification merely because a patient requests it;
- (b) Valid consent requires full disclosure of the practitioner's qualifications and limitations;
- (c) The Defendant failed to disclose that he was not qualified to perform these procedures.

[46] Even though this Court observes that the Defendant's advice was the same as that accorded by Dr Nasir, the fact that he had taken the opposite action of his advice which was by carrying out the surgical procedures that he was not licenced to, does not negate his breach of duty.

[47] Evidence shows that the surgical procedures undertaken by the Defendant on the Plaintiff did not resolve his nose implant issues but instead aggravated it because the nose implant was not removed but trimmed instead. As such, the condition of the Plaintiff was not alleviated. The infection of the Plaintiff's nose had persisted from the surgical procedures performed by the Defendant to a long period after that. Based on the evidence, the Plaintiff had only recovered from that condition upon the removal of the nose implant, which was carried out by Dr Nasir.

[48] On the balance of probabilities, this Court is satisfied that the causation of the Defendant's breach of duty/standard of care to the Plaintiff's pain and suffering was established.



[49] Based on the evidence, this Court finds on the balance of probabilities that the Plaintiff had refused to heed the Defendant's advice. It was his choice to undergo the procedure to trim the nose implant instead. However, the Defendant had breached the medical code of ethics by having proceeded to carry out medical aesthetic procedures for which he was not licensed. On the balance of probabilities, this Court further finds that the infection was not abated and was further caused by the procedure of trimming the nose implant. This was shown by the swelling and the pus discharge from the site of the nose where the said procedure was carried out by the Defendant. (See *Loo Chooi Gaik v. Dr Loh Lay Soon* [2018] MLRAU 520; *Abiramee Ramalingam v. Nur Isabella Abdullah & Ors* [2023] MLRHU 2276; *Sri Inai (Pulau Pinang) Sdn Bhd v. Yong Yit Swee & Ors* [2002] 2 MLRA 196).

Liability

[50] Based on these findings, this Court holds that:

- (a) The Defendant acted negligently by performing medical procedures beyond the scope of his qualifications and license;
- (b) This constituted a fundamental breach of the standard of care expected of medical practitioners;
- (c) The Defendant is liable for the injuries and complications suffered by the Plaintiff as a result of these unauthorized procedures.

[51] This finding of liability is based on the simple but crucial principle that medical practitioners must not perform procedures beyond their qualifications and licensing, regardless of their confidence in their ability to do so. This is fundamental to patient safety and the integrity of medical practice.

[52] The Plaintiff had submitted a breach of duty of care by the Defendant on three limbs:

- (1) The Defendant was not qualified;
- (2) The Defendant failed to maintain a sterile environment;
- (3) Failure to inform the Plaintiff of the risk of the procedure.

[53] In addressing the issue of whether the Defendant had failed to maintain a sterile environment, this Court finds that the Plaintiff had failed to prove on the balance of probabilities that it was so. This Court accepts the Defendant's submissions based on the cross-examination of the Plaintiff's witnesses that there was no conclusive evidence or even evidence on the balance of probabilities that the environment was not sterile when the surgical procedure was performed.



[54] While this Court finds that the Plaintiff was informed repeatedly by the Defendant of the risks of not removing the implant, the Defendant had proceeded to carry out the procedure to trim the nose implant as requested by the Plaintiff for which he was not licenced. This Court finds that he had failed to inform the Plaintiff that he was not permitted to carry out such medical procedure according to the Chapter 1 LCP licence he held. The Defendant's failure to disclose the limitations of his qualifications to the Plaintiff undermined the latter's ability to make an informed choice about his treatment.

[55] In any event, the liability of the Defendant is not negated or mitigated.

Assessment Of Damages

[56] The Plaintiff prayed for compensation for the trauma, shock and stress he claimed to have suffered in the amount of RM300,000.00. He had also claimed for medical negligence compensation of RM500,000.00. It was pleaded that there was a loss of marriage prospects in the amount of RM100,000.00 and compensation for living a normal life in the amount of RM500,000.00. The Plaintiff had also asked for compensation for loss of reputation and business confidence in the amount of RM500,000.00. He sought damages of RM200,000.00 being costs for future surgical plans. The total amount prayed for is RM2,100,000.00.

[57] The assessment of damages must follow these established principles:

- (a) Damages serve as compensation, not punishment or reward (*Inas Faiqah Mohd Helmi v. Kerajaan Malaysia & Ors* [2016] 1 MLRA 647);
- (b) The award must be fair, adequate and not excessive (*Yang Salbiah & Anor v. Jamil Harun* [1980] 1 MLRA 716 at 717);
- (c) The purpose is to put the victim, as far as money can, in the position they would have been in but for the negligence (*Shanmugam Gopal v. Zinal Abidin Nazim & Anor* [2003] 3 MLRH 410).

General Damages

[58] For pain and suffering, this Court awards RM150,000.00. This takes into account the effects of the procedure performed by the Defendant which resulted in the Plaintiff experiencing pus discharge because the trimming of the Plaintiff's nose implant had allowed the infection to continue. The surgical procedure performed by the Defendant on the Plaintiff had not resolved the Plaintiff's condition. The fact that any reconstructive surgery would not fully revert the Plaintiff's nose shape back to its original condition was also considered. The pain and discomfort during recovery periods, as well as some psychological impact on his mental health due to the failed procedures were also taken into account.



[59] This award is justified by comparable cases:

1. *Sheela Christina Nair v. Regency Specialist Hospital Sdn Bhd & Ors* [2016] MLRHU 758, the plaintiff was awarded RM240,000.00 for physical and emotional distress as well as the loss of amenities of life after a negligently performed surgery leaving the Plaintiff to rely on colostomy bags due to a perforation of the small intestine.
2. *Norfazlin Zamani v. Kerajaan Malaysia & Ors* [2022] MLRHU 3042. Plaintiff was awarded RM260,000.00 on the basis of physical and psychiatric pain and suffering as well as loss of amenities of life after losing her reproductive organs.
3. *Pantai Medical Centre Sdn Bhd v. Fareed Reezal Arund & Another Appeal* [2022] 2 MLRA 592, where the Plaintiff was left in a persistent vegetative state after suffering a brain injury, was awarded RM400,000.00 on the basis of pain and suffering as well as loss of amenities of life.
4. *Nur Arissa Naura Noor Affrizal & Anor v. Dr Abirami Kunaseelan & Ors* [2023] MLRHU 637, where the Court awarded the Plaintiff RM500,000.00 on the basis of pain and suffering as well as loss of amenities of life. The Plaintiff at the material time was 4 years of age suffering from brain damage with a life expectancy of another 40 years.

Special Damages

[60] For special damages, this Court regarded all bills, invoices and documents adduced by the Plaintiff. This Court awards:

- (a) Cost of corrective surgeries and medicine: RM68,239.55
 - Supported by medical bills, receipts and other documentations
 - Including consultations, medications, and dressings
 - Verified by receipts and medical records
 - Necessary to repair damage from unauthorized procedures
- (b) Transportation expenses: – as there is no proof for this Court to consider awarding the cost for travel.

[61] The breakdown of special damages is as follows:



Special Damages Awarded – RM68,239.55	
Description	Cost
1) Reconstructive rhinoplasty at Hoa Don Dich Vu Hospital in Vietnam	RM35,085.00
2) Nasal implant removal at Beverly Wilshire Medical Centre	RM11,109.00
3) Treatment at YanHee International Hospital in Thailand	RM21,384.55
4) Specialist consultation at Beverly Wilshire Medical Centre	RM250.00
5) Cost for various prescription drugs, medical reports etc.	RM411.00

Loss of Income

[62] For loss of income, although it is feasible that he would have needed to take time off work to attend to this matter, the Plaintiff had failed to prove to this Court that he had clients booked or that he had to deny clients on those days. He did not produce any form of employment contract to base his claim on. This Court will not award any damages on loss of income.

Loss of Prospect of Marriage / Loss of Normal Life / Loss of Reputation

[63] This Court will also not award any damages for loss of marriage prospects or the ability to live a normal life as there was no evidence for this Court to reward such a claim. The Plaintiff had failed to show to this Court that he was, is or would be spurned as a result of the procedures undertaken on his nose. This Court will also deny any damages for loss of reputation and business confidence. Again, nothing was produced at trial for this Court to assess.

Future Medical Expenses

[64] For future medical expenses, Dr Nasir adduced evidence that it will cost around RM80,000.00 to repair and reconstruct the Plaintiff's nose and to erase the scars. Although the Plaintiff sought much more (RM200,000.00) there was no evidence to justify such an amount. This Court noted that the Plaintiff had undergone two corrective rhinoplasty surgeries in Vietnam and Thailand that amounted to RM56,469.55. This Court was minded to award RM80,000.00 for future medical expenses to the Plaintiff. As the amount of RM56,469.55 has already been awarded under Special Damages, this Court will award the sum of RM23,530.45. This should include any laser treatments for the removal of scars where necessary.



Exemplary Damages

[65] This Court is of the considered opinion that an award of exemplary damages is appropriate in this case. Exemplary damages are awarded for deterrence purposes – to make an example of, such as in this case where beauty clinics which have mushroomed nationwide offering beauty aesthetics surgeries, must be careful not to proceed to administer and perform procedures beyond their limit allowed by their respective licences. In this case against the Defendant, this Court awards exemplary damages of RM100,000.00 to the Plaintiff.

Total Award

[66] The total damages awarded are as follows:

• General Damages:	RM150,000.00
• Special Damages:	RM68,239.55
• Future Medical Expenses:	RM23,530.45
• Exemplary Damages:	RM100,000.00
TOTAL:	RM341,770.00

[67] This Court opines that the total amount of damages awarded is reflective of the critical importance of medical practitioners operating strictly within their qualifications and licensed scope of practice. The regulatory framework that defines different levels of aesthetic medical practice exists precisely to protect patient safety and ensure an appropriate standard of care.

[68] This Court awards interest of 5% per annum on the said total sum, to be calculated from the date of this judgment until full and final settlement. Costs of RM80,000.00 which this Court deems reasonable granted that this is a medical negligence litigation, the number of witnesses who had attended the trial and the duration of the trial, to be awarded to the Plaintiff.

