

**LEGAL
THEORY/JURISPRUDENCE
CASE NOTES**



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Sample

Cattanach v Melchior [2003] 215 CLR 1

- Court details

Full Court of the High Court of Australia.¹

- Procedural history

This case was on appeal from the Supreme Court of Queensland. There, Holmes J held that the failure of Dr Cattanach to warn the Melchiors of their capacity to conceive a child and his negligent advice caused them to become parents of an unplanned child. Mrs Melchior was awarded \$103,672.39 for loss and damage caused by pregnancy whilst Mr Melchior was awarded \$3,000 for loss of consortium and they were jointly awarded \$105,249.33 for the cost of raising and maintaining the child.²

The appeal was launched by Cattanach and the State of Queensland in the Queensland Court of Appeal but was dismissed by a majority.³

Special leave was later granted for the defendants to appeal to the High Court exclusively on the issue of the award of damages for the cost of raising and maintaining a healthy child.⁴

- Facts

Mrs Melchior had seen the obstetrician and gynaecologist Dr Cattanach, and asked for a tubal ligation procedure to be performed on her, citing financial inability to support a third child. She recalled having one ovary removed when she was fifteen years of age and that her fallopian tube had at that time had also been removed. While performing the

¹ *Cattanach v Melchior* [2003] 215 CLR 1.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

operation Dr Cattnach could see no evidence of a second fallopian tube and so assumed that Mrs Melchior's recollection was accurate.⁵

After the operation Mrs Melchior became pregnant to her husband and gave birth to a healthy baby. Mr and Mrs Melchior brought actions against Dr Cattnach for negligence. Mrs Melchior applied for damages for loss and damage caused by pregnancy and birth whilst Mr Melchior applied for damages for loss of consortium and they jointly applied for damages for the cost of raising and maintaining the child to adulthood.⁶

- Issues

This was an important case regarding the tort of negligence in a medical context but it also had repercussions regarding legal theory and jurisprudence.⁷

The State of Queensland and the defendant Dr Cattnach argued that the birth of a healthy child was not a harm and, therefore, could not be compensated. They also argued that the damages do not arise from a physical injury to the plaintiff and that such damages would open the floodgates to lawsuits. Additionally, they argued that the benefit of raising a child may be greater than the cost, though it is immeasurable. Intervening in the case by leave were also the Solicitors-General for Western Australia and South Australia who argued the same grounds as the State of Queensland and Dr Cattnach.⁸

The respondents (Mr and Mrs Melchoir) contended that no special exception should be granted as this was simply a case of medical negligence. They argued that the costs claimed were only those the parents were legally obliged to incur. They also argued that the benefit from the child's existence is of a different class to the fiscal cost of raising it and, therefore, cannot offset the latter. Additionally, they contended that the appellant's

5 Ibid.

6 Ibid.

7 Ibid.

8 Ibid.

argument that the child would be psychologically harmed was mere speculation. Finally, they argued that difficulty in calculating damages should not preclude their award.⁹

- Reasoning / Decision (commentary)

There was a ruling in a similar English case from the House of Lords, *McFarlane v Tayside Health Board* [2000] 2 AC 59, where it was held that damages for the cost of raising a healthy child are not recoverable. Despite this, the majority of the High Court held that those damages can be recovered.¹⁰

It was accepted by some of the judges (for example Kirby J at [180]) that interference in this matter, seen to be one of social policy, was for the legislature rather than the judiciary.¹¹

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⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid at 180.